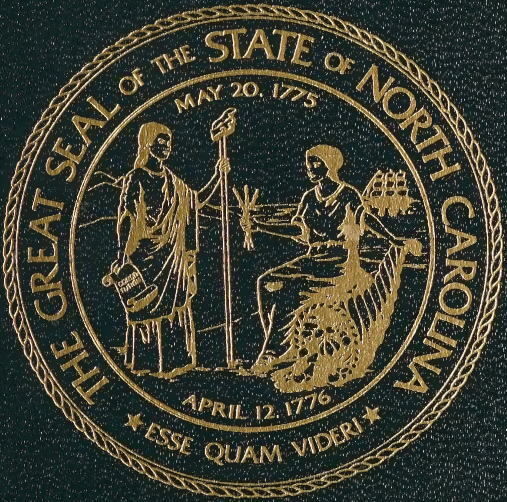
GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

Volume 5

Chapters 18B Through 24

Prepared Under the Supervision of
The Department of Justice
of the State of North Carolina
by
The Editorial Staff of the Publisher

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Preface

This volume contains the general laws of a permanent nature enacted by the General Assembly through the 2009 Regular Session that are within Chapters 18B through 24, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 60 days after the adjournment of the session" in which passed.

A ready reference index is included at the back of this volume. This index is intended to give the user a quick reference to larger bodies of statutes within this volume only. For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

Roy Cooper
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2009 Regular Session affecting Chapters 18B through 24 of the General Statutes.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted through September 18, 2009. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821, 1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 2009

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2009 Replacement Code to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

ROY COOPER
Attorney General of North Carolina

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ARTICLE 1.

General Provisions.

§ 18B-100. Purpose of Chapter.

This Chapter is intended to establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina, and to provide procedures to insure the proper administration of the ABC laws under a uniform system throughout the State. This Chapter shall be liberally construed to the end that the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages shall be prohibited except as authorized in this Chapter.

Except as provided in this Chapter, local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited. (1937, c. 49, s. 1; 1971, c. 872, s. 1; 1981, c. 412, s. 2.)

Local Modification. — (As to this Chapter) city of Concord: 1985 (Reg. Sess., 1986), c. 861, s. 1; (As to this Chapter) city of Reidsville: 1989 (Reg. Sess., 1990), c. 957, ss. 1, 5; town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5; (As to this Chapter) town of Lake Lure: 1979, c. 353, s. 5; 1987, c. 194, s. 5.

Cross References. — As to the alcoholic beverages tax, see G.S. 105-113.68 et seq.

Editor's Note. — Session Laws 1981, c. 412, repealed Chapter 18A, effective January 1, 1982, and enacted this Chapter in lieu thereof. Where appropriate, the historical citations to the sections of the repealed Chapter have been added to the corresponding sections of the new Chapter.

Session Laws 1981, c. 412, which enacted this Chapter, as amended by Session Laws 1981, c. 747, s. 66, provided in s. 4(4) that in all places where they appeared in the General Statutes, the phrases "intoxicating liquor" and "liquor," except where "liquor" appears in the phrase "spirituous liquor," would be amended to read "alcoholic beverages."

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Editor's Note. — *Some of the cases cited under the provisions of this Chapter were decided under similar provisions of former Chapters 18 and 18A.*

For a case discussing the development of alcoholic beverage control laws, see Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914, modified on other grounds, 332 N.C. 299, 420 S.E.2d 174 (1992).

ABC Permit Preempts Municipal Zoning Ordinance. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State Alcoholic Beverage Control Commission, was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503, cert. denied, 320 N.C. 631, 360 S.E.2d 91 (1987).

Applied in Food Fair, Inc. v. City of Henderson, 17 N.C. App. 335, 194 S.E.2d 213 (1973); AGL, Inc. v. North Carolina ABC Comm'n, 68 N.C. App. 604, 315 S.E.2d 718 (1984).

Cited in Smith v. County of Mecklenburg, 280 N.C. 497, 187 S.E.2d 67 (1972); State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973); United States Labor Party v. Knox, 430 F. Supp. 1359 (W.D.N.C. 1977); Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

(1) "ABC law" or "ABC laws" means any statute or statutes in this Chapter or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of this Chapter.

(2) "ABC permit" or "permits" means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, "ABC permit" or "permit" means a presently valid permit.

(3) "ABC system" means a local board and all ABC stores operated by it, its law-enforcement branch, and all its employees.

(4) "Alcoholic beverage" means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(5) "ALE Division" means the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

(5a) "Bailment surcharge" means the charge imposed on each case of liquor shipped from a Commission warehouse as provided in G.S. 18B-208. This bailment surcharge is in addition to the bailment charge imposed by G.S. 18B-804(b)(2).

(6) "Commission" means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7a) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

- b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).
- c. Is located within 15 miles of a national scenic highway.
- d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

(7b) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

(8) "Local board" means a city or county ABC board, or local board created pursuant to the provisions of G.S. 18B-703. A local board is an independent local political subdivision of the State. Nothing in this Chapter shall be construed as constituting a local board the agency of a city or county or of the Commission.

(8a) "Lottery law" or "lottery laws" means any provision of Chapter 18C of the General Statutes and the rules issued by the Lottery Commission under the authority of Chapter 18C of the General Statutes.

(9) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage.

(10) "Mixed beverage" means either of the following:

- a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
- b. A premixed cocktail served from a closed package containing only one serving.

(11) "Nontaxpaid alcoholic beverage" means any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.

(12) "Person" means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

(12a) "Premises" means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process.

(13) "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(13a) **(See note)** "Special ABC area" means an area that meets the following requirements:

Either:

- a. The area has fewer than 500 permanent residents, and the area:
  1. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in one city; and
  2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has

more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

b. The area has more than 500 permanent residents, and the area:
  1. Is located in a county:
    I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;
    II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and
    III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and
  2. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services; or

c. The area is an area of a county where the following requirements are met:
  1. The county borders on the Atlantic Ocean and has a seaport supporting oceangoing vessels;
  2. ABC stores have been established in the county and the sale of mixed beverages is allowed in six or more municipalities;
  3. The population of the county, according to the 2000 census, exceeds 52,000;
  4. The tourism economy of the county is made up of more than 3,000 tourism-related jobs; and
  5. Tourism expenditures within the county exceed two hundred million dollars ($200,000,000) annually.

(14) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(14a) "Tourism ABC establishment" means a restaurant or hotel that meets both of the following requirements:

a. Is located on property, a property line of which is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between the State line and Milepost 460.

b. Is located in a county in which the on-premises or off-premises sale of malt beverages or unfortified wine is authorized in at least one city.

(14b) "Tourism resort" means:

a. Any restaurant and lodging facility, whether public or private, owned and operated as a resort property offering food, beverage, lodging, and meeting facilities to travelers and tourists and featuring one or more golf courses and two or more tennis courts along with other recreational and sporting activities, or

b. Any restaurant, whether public or private, owned and operated as a resort property offering food and beverage to travelers and tourists and featuring an equestrian center and two or more tennis courts along with other recreational and sporting activities.

Receipts from sporting and recreational activities of a tourism resort shall be at least twenty-five percent (25%) of total gross receipts. Receipts from the sale of alcoholic beverages shall not exceed fifty percent (50%) of total gross receipts. A tourism resort open to the public shall advertise at least quarterly in a regional or national travel or sports industry publication, or in the State travel guide published by the North Carolina Department of Commerce.

(15) "Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 2; c. 1285, s. 1; 1983, c. 435, s. 41; 1985, c. 69; 1987, c. 443, s. 1; 1989, c. 629, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 5; 1991 (Reg. Sess., 1992), c. 920, ss. 1, 10; 1993, c. 415, ss. 1, 2; 1995, c. 466, s. 1; 1997-443, s. 16.27(b); 1999-461, s. 1; 1999-462, ss. 1, 13; 2001-515, s. 1; 2004-135, s. 1; 2004-203, s. 23; 2005-276, s. 31.1(x); 2005-277, s. 1; 2005-344, s. 10.1(a); 2005-392, s. 1; 2005-435, s. 25(a); 2006-253, s. 2; 2006-264, s. 95.)

Local Modification. — Graham and Swain: 2001-515, s. 2; village of Bald Head Island: 1985, c. 156.

Editor's Note. — Session Laws 1987, c. 443, which added former subdivision (16), defining "Unincorporated area", which was rewritten in 1989 to define "Special ABC area" and renumbered subdivision (13a), provided in s. 3 that the act would not include Robeson, Cleveland, Rutherford and Polk Counties.

Session Laws 1989, c. 629, which amended former subdivision (16) (now subdivision (13a)), provides in s. 4, as amended by Session Laws 1999-462, s. 11: "This act shall not include Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, Polk, Davidson, and Davie Counties."

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

CASE NOTES

Editor's Note. — *Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Alcoholic Content. — The State's evidence was sufficient for the jury in a prosecution of defendant for illegal possession of intoxicating liquor for the purpose of sale in violation of former G.S. 18A-7 where it tended to show that defendant had in his constructive possession more than four liters of liquor with an alcoholic content of greater than 21%. State v. Harrell, 50 N.C. App. 531, 274 S.E.2d 353 (1981).

The General Assembly clearly intended to preempt the regulation of malt beverages in order to prevent local governments from enacting regulatory ordinances. State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973).

Allowing local governments to regulate malt beverages contrary to State law would result in an intolerable situation whereby citizens lawfully possessing beer in one county would be violating a criminal law in another. The legislature preempted the field in order to avoid such confusion. State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973).

Malt Beverage Evidence Lacking. — State did not provide substantial evidence to show defendant's actual or constructive possession of a malt beverage to prove that defendant had been a person less than 21-years-old in possession of a malt beverage in violation of G.S. 18B-302(b)(1). In particular, the State did not have anyone testify that the alcohol that defendant consumed or which had been in the vehicle that defendant had been driving was a malt beverage, as defined by G.S. 18B-101(9) according to the percentage of alcohol present in a drink. State v. Hensley, 190 N.C. App. 600, 661 S.E.2d 18, 2008 N.C. App. LEXIS 1014 (2008).

A permit grants a privilege. It does not convey either a constitutional right or a property right. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

It is subject to cancellation by the issuing authority for cause. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

Those wines formerly called "sweet wines" are now called "fortified wines." Clark v. North Carolina Bd. of Alcoholic Control, 14 N.C. App. 464, 188 S.E.2d 705 (1972).

Applied in State v. Daughtry, 61 N.C. App. 320, 300 S.E.2d 719 (1983).

Cited in In re Hardy, 39 N.C. App. 610, 251 S.E.2d 643 (1979); Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682 (1988); State v. Fletcher, 92 N.C. App. 50, 373 S.E.2d 681 (1988).

OPINIONS OF ATTORNEY GENERAL

What Constitutes Sale of Beer. — See opinion of Attorney General to Mr. Lee P. Phillips, Director of Enforcement, State Board of Alcoholic Control, 40 N.C.A.G. 3 (1970).

§ 18B-102. Manufacture, sale, etc., forbidden except as expressly authorized.

(a) General Prohibition. — It shall be unlawful for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the ABC law.

(b) Violation a Class 1 Misdemeanor. — Unless a different punishment is otherwise expressly stated, any person who violates any provision of this Chapter shall be guilty of a Class 1 misdemeanor. In addition the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505. (1923, c. 1, s. 1; C.S., s. 3411(a); 1937, c. 49, s. 24; c. 411; 1939, c. 158, s. 501; 1941, c. 339, ss. 1, 3, 4; 1945, c. 780; c. 903, ss. 1, 3, 10; 1971, c. 872, s. 1; 1973, c. 476, s. 193; c. 1014; 1975, c. 329; c. 411, s. 2; 1977, 2nd Sess., c. 1138, s. 1; 1979, c. 683, s. 1; 1981, c. 412, s. 2; 1989, c. 800, s. 1; 1993, c. 539, s. 310; 1994, Ex. Sess., c. 14, s. 29; c. 24, s. 14(c).)

CASE NOTES

Editor's Note. — *Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Constitutionality. — Provisions of North Carolina's alcoholic beverage code, which prohibited out-of-state wineries from selling wine directly to North Carolina residents but allowed North Carolina wineries to make direct sales, violated the Commerce Clause, and state officials were enjoined from enforcing those provisions. Beskind v. Easley, 197 F. Supp. 2d 464, 2002 U.S. Dist. LEXIS 6045 (W.D.N.C. 2002).

State's Regulations in Relation to Interstate Commerce Clause. — Both by the U.S. Const., Amend. XXI and this Chapter, liquor has been placed in a category somewhat different from other articles of commerce, and the State's regulations thereof should not be held obnoxious to the interstate commerce clause, unless clearly in conflict with granted federal powers and congressional action thereunder. State v. Hall, 224 N.C. 314, 30 S.E.2d 158 (1944).

Classification of Offense. — Trial court did not err in assigning one point in defendant's prior record level calculation under G.S. 15A-1340.14(b)(5) for conviction of purchase or possession of beer or wine under G.S. 18B-302, as any person who violated any provision of the chapter at issue was guilty of a class one misdemeanor. State v. Frady, 175 N.C. App. 393, 623 S.E.2d 346, 2006 N.C. App. LEXIS 53 (2006).

Guilty Knowledge. — This section must be interpreted in the light of the common-law principle that guilty knowledge is an essential element of crime, and therefore a person cannot be held guilty of illegally transporting alcoholic beverages if he has no knowledge of the nature of the goods transported. State v. Welch, 232 N.C. 77, 59 S.E.2d 199 (1950).

A principal acts through its agents and employees and is responsible for their conduct. American Legion v. North Carolina State Bd. of Alcoholic Control, 27 N.C. App. 266, 218 S.E.2d 513 (1975).

Possession may be either actual or constructive. State v. Meyers, 190 N.C. 239, 129 S.E. 600 (1925). See also State v. Norris, 206

N.C. 191, 173 S.E. 14 (1934); State v. Webb, 233 N.C. 382, 64 S.E.2d 268 (1951); State v. Harrelson, 245 N.C. 604, 96 S.E.2d 867 (1957); State v. Glenn, 251 N.C. 156, 110 S.E.2d 791 (1959).

A prima facie case of the unlawful sale of alcoholic beverages may be established by circumstances sufficient to show that the defendant had in his constructive possession large quantities of whiskey not on his premises, in the possession of others who held it for him. State v. Pierce, 192 N.C. 766, 136 S.E. 121 (1926).

An accused has possession of alcoholic beverages when he has both the power and the intent to control its disposition or use. The requisite power to control may reside in the accused acting alone or in combination with others. State v. Fuqua, 234 N.C. 168, 66 S.E.2d 667 (1951).

If a man procures another to obtain liquor for him and put it in a given place, and the other performs this agreement and places the liquor, then the possession is complete. A person may be in the possession of the article which he has not at the moment about his person. The constructive possession, as well as the actual possession, is in the contemplation of the statute. State v. Myers, 190 N.C. 239, 129 S.E. 600 (1925); State v. Pierce, 192 N.C. 766, 136 S.E. 121 (1926).

Evidence Held Sufficient. — Although defendant made no mention of the sale of alcohol, and there was no mention of a price to be paid or received for the liquor, the evidence was sufficient to show a sale under this section where defendant left the house with a request from the undercover officer that defendant provide her with liquor, complied with the request, and received money for the transfer of alcohol and marijuana. State v. Fletcher, 92 N.C. App. 50, 373 S.E.2d 681 (1988).

Burden of Showing Right to Possess. — This section contemplates that no person shall transport or have in his possession for the purpose of sale any alcoholic beverages. There are exceptions and, ordinarily, the burden is on him who asserts that he comes within the exception to show by way of defense that he is one of that class authorized by law to have intoxicants in his possession. State v. Gordon, 224 N.C. 304, 30 S.E.2d 43 (1944); State v. Fletcher, 92 N.C. App. 50, 373 S.E.2d 681 (1988).

Possession of Taxpaid Liquor at Unauthorized Place Unlawful. — Possession of taxpaid whiskey is illegal under this section if it is not at an authorized place. State v. Welborn, 249 N.C. 268, 106 S.E.2d 204 (1958).

The possession of nontaxpaid liquor in any quantity anywhere in the State is, without exception, unlawful. State v. Barnhardt, 230 N.C. 223, 52 S.E.2d 904 (1949).

Purpose of Possession Immaterial. — Upon the trial for transporting alcoholic beverages in violation of this Article, the purpose of the possession of the intoxicants, or that it was for the purpose of profit, is immaterial, and the fact that the person accused is carrying intoxicants from one place to another is sufficient. State v. Sigmon, 190 N.C. 684, 130 S.E. 854 (1925).

Whether the transportation of nontaxpaid whiskey is unlawful does not depend upon whether it is being transported for the purpose of sale. State v. Wells, 259 N.C. 173, 130 S.E.2d 299 (1963).

The word "transport" means to carry or convey from one place to another, and therefore a person transports alcoholic beverages if he carries them on his person or conveys them in a vehicle under his control or in any other manner, regardless of whether they belong to him or are in his custody. State v. Welch, 232 N.C. 77, 59 S.E.2d 199 (1950).

A person is guilty of unlawfully transporting alcoholic beverages in violation of this section if he knowingly transports alcoholic beverages for any purpose other than those specified in this Chapter. State v. Welch, 232 N.C. 77, 59 S.E.2d 199 (1950).

Transportation as Including Possession. — Where the evidence was sufficient to convict the defendant of transporting whiskey under this section, the transportation of spiritous liquor included the possession. State v. Sigmon, 190 N.C. 684, 130 S.E. 854 (1925).

Where an indictment for violating the prohibition law contained a count as to the unlawful possession and also as to unlawfully transporting spirituous liquor, an acquittal upon the first was not inconsistent with a conviction on the second issue. They are two distinct offenses under the statute. State v. Sigmon, 190 N.C. 684, 130 S.E. 854 (1925).

Only a person in the actual or constructive possession of nontaxpaid whiskey, absent conspiracy or aiding and abetting, could be guilty of the unlawful transportation thereof. State v. Wells, 259 N.C. 173, 130 S.E.2d 299 (1963).

Receiving Alcoholic Beverages. — There is no provision in this Article which in express terms prohibits one from receiving alcoholic beverages. Except as embraced and included by the acts which are prohibited in the statute, the mere receiving of alcoholic beverages is not forbidden. State v. Hammond, 188 N.C. 602, 125 S.E. 402 (1924).

It was bad pleading to make the mere receipt of liquor the subject of a separate and independent count; and the charge that the mere receipt of same, though only in the home of the recipient and kept there only for a lawful purpose, is forbidden was not warranted by any proper construction of the statute suggested to this court. State v. Hammond, 188 N.C. 602, 125 S.E. 402 (1924).

Effect on Recovery Under Compensation Act. — The mere fact that an applicant for compensation under the provisions of the Workers' Compensation Act had in his possession whiskey contrary to this section did not alone prevent the recovery of compensation. Jackson v. Dairymen's Creamery, 202 N.C. 196, 162 S.E. 359 (1932).

Separate Offenses Charged in Same Warrant. — The offenses of delivering and of keeping for sale are separate offenses and although charged in the same warrant, they will be treated as separate counts. State v. Jarrett, 189 N.C. 516, 127 S.E. 590 (1925).

Sufficiency of Evidence. — See State v. Meyers, 190 N.C. 239, 129 S.E. 600 (1925); State v. Sigmon, 190 N.C. 684, 130 S.E. 854 (1925); State v. Pierce, 192 N.C. 766, 136 S.E. 121 (1926); State v. Hege, 194 N.C. 526, 140 S.E. 80 (1927); State v. Norris, 206 N.C. 191, 173 S.E. 14 (1934); State v. Epps, 213 N.C. 709, 197 S.E. 580 (1938); State v. Wilson, 227 N.C. 43, 40 S.E.2d 449 (1946); State v. Holbrook, 228 N.C. 582, 46 S.E.2d 842 (1948); State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949); State v. Webb, 233 N.C. 382, 64 S.E.2d 268 (1951); State v. Harrelson, 245 N.C. 604, 96 S.E.2d 867 (1957); State v. Mitchell, 260 N.C. 235, 132 S.E.2d 481 (1963).

Testimony by officers searching without a warrant that they found a quantity of nontaxpaid liquor in defendant's car was held competent. State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

General Verdict Sufficient for Conviction. — A general verdict of guilty, under evidence tending to show that the defendant unlawfully had in his possession, when not in his private dwelling, alcoholic beverages, under an indictment therefor, as well as for the unlawful receiving and transportation, was sufficient to sustain a conviction upon the count of possession prohibited. State v. McAllister, 187 N.C. 400, 121 S.E. 739 (1924).

Erroneous Charge as to Separate Count Harmless. — Where a general verdict of guilty had been rendered against the defendant, upon competent evidence tending to show that he unlawfully had spirituous liquor in his possession, an erroneous charge as to receiving and transporting it was harmless error. State v. McAllister, 187 N.C. 400, 121 S.E. 739 (1924).

Harmless Error. — When a defendant was charged in two counts in the bill of indictment with separate offenses of the same grade, and the jury returned a verdict of guilty as to both counts, error in the trial of one count was harmless and did not entitle defendant to a new trial when such error did not affect the verdict on the other count. State v. Epps, 213 N.C. 709, 197 S.E. 580 (1938).

Distinct Charges Supporting Separate Sentences. — A charge of unlawful possession of alcoholic beverages for the purpose of sale and a charge of unlawful sale of alcoholic beverages are distinct charges of separate offenses and support separate sentences by the court on a general plea of guilty. State v. Moschoure, 214 N.C. 321, 199 S.E. 92 (1938).

Sentence of Two Years Constitutional. — See State v. Beavers, 188 N.C. 595, 125 S.E. 258 (1924).

Separate Punishment for Different Counts. — Upon a general verdict of guilty to and indictment charging separately unlawful possession of alcoholic beverages and unlawful transportation of alcoholic beverages, the court is empowered to assign separate punishment for each count, notwithstanding that the possession was physically necessary to the act of transporting. State v. Chavis, 232 N.C. 83, 59 S.E.2d 348 (1950).

Estate of accident victim could not maintain a wrongful death action against vendors where the estate could not show that had victim lived, she could have maintained a negligence per se action based on a violation of G.S. 18B-302, or an action under common law negligence based on the selling of alcohol to underage persons in violation of this section. Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 488 S.E.2d 830 (1997), aff'd, 349 N.C. 196, 505 S.E.2d 131 (1998).

Civil Suit Based on Violation. — A negligence per se claim could not have been maintained by the decedent against the vendors of alcoholic beverages based on the vendors' violation of the statute prohibiting sale of such beverages to underage persons; thus, the estate could not maintain wrongful death action. Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 505 S.E.2d 131 (1998).

Cited in Hutchens v. Hankins, 63 N.C. App. 1, 303 S.E.2d 584 (1983); Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-102.1. Direct shipments from out-of-state prohibited.

(a) It is unlawful for any person who is an out-of-state retail or wholesale dealer in the business of selling alcoholic beverages to ship or cause to be shipped any alcoholic beverage directly to any North Carolina resident who does not hold a valid wholesaler's permit under Article 11 of this Chapter.

(b) The Commission shall mail a notice by certified mail ordering a person who violates the provisions of subsection (a) of this section to cease and desist any shipments of alcoholic beverages to North Carolina residents. If the offender cannot produce a receipt or otherwise show that applicable State taxes have been paid on the shipped alcohol within 30 days after this notice has been deposited by certified mail addressed to the out-of-state retail or wholesale dealer either at the address shown on the shipment or the last known address of that dealer in any legal registry, such as a registry with the Secretary of State for incorporation of a business, or within 30 days after personal service of the notice on the out-of-state retail or wholesale dealer, it shall be presumptive evidence of his intent to ship alcoholic beverages directly to a North Carolina resident who does not hold a valid wholesaler's permit issued by the Commission.

(c) This section shall not apply to producers of beverage alcohol holding a basic permit from the Bureau of Alcohol, Tobacco and Firearms.

(d) Upon determination by the Commission that a holder of a basic permit from the Bureau of Alcohol, Tobacco and Firearms has made an illegal shipment to consumers in North Carolina, the Commission shall notify the Bureau of Alcohol, Tobacco and Firearms in writing and by certified mail and request the Bureau to take appropriate action.

(e) Whoever violates the provisions of this section shall be guilty of a Class I felony and shall pay a fine of not more than ten thousand dollars ($10,000). (1997-348, s. 1.)

CASE NOTES

Constitutionality. — Provisions of North Carolina's alcoholic beverage code, which prohibited out-of-state wineries from selling wine directly to North Carolina residents but allowed North Carolina wineries to make direct sales, violated the Commerce Clause, and state officials were enjoined from enforcing those provisions. Beskind v. Easley, 197 F. Supp. 2d 464, 2002 U.S. Dist. LEXIS 6045 (W.D.N.C. 2002).

Cited in Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-103. Exemptions.

The following activities shall be permitted:

(1) The use of ethyl alcohol for scientific, chemical, pharmaceutical, mechanical, and industrial purposes;

(2) The use of ethyl alcohol by persons authorized to obtain it tax free, as provided by federal law;

(3) The use of ethyl alcohol in the manufacture and preparation of any product unfit for use as a beverage;

(4) The use of alcoholic beverages by licensed physicians, druggists, or dental surgeons for medicinal or pharmaceutical purposes; or the use of alcoholic beverages by medical facilities established and maintained for the treatment of patients addicted to the use of alcohol or drugs;

(5) The use of grain alcohol by college, university or State laboratories, and by manufacturers of medicine, for compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes;

(5a) The manufacture, possession, and consumption of alcoholic beverages for the purpose of conducting scientific, chemical, pharmaceutical, mechanical, industrial, and educational research in connection with teaching, research, or extension programs conducted by, or under the supervision of, an instructor at an accredited community college, public or private college or university, or an extension agent in connection with educational programs and activities offered by the North Carolina Cooperative Extension Service;

(6) The manufacture, importation, and possession of denatured alcohol produced and used as provided by federal law;

(7) The manufacture or sale of cider or vinegar;

(8) The possession and use of unfortified wine or fortified wine for sacramental purpose by any organized church or ordained minister, including in public school buildings when the use of those buildings is approved by the local school board;

(9) The possession and use of alcohol acquired for controlled-drinking programs as authorized under G.S. 20-139.1(g);

(10) The use of spirituous liquor in the manufacture of flavors or flavoring extracts that are unfit for beverage use;

(11) Under the direct supervision of an instructor during a culinary class that is part of an established culinary curriculum at an accredited college or university, the delivery to or possession or consumption by a student who is less than 21 years of age, when the student is required to taste or imbibe the alcoholic beverage during a culinary class conducted pursuant to the curriculum. (1923, c. 1, ss. 4, 19, 20; C.S., s. 3411(d), (s), (t); 1935, c. 1141; 1971, c. 872, s. 1; c. 1233; 1981, c. 412, s. 2; c. 747, s. 36; 1981 (Reg. Sess., 1982), c. 1262, s. 3; 1983, c. 435, s. 6; 1985, c. 566, s. 2; 1993, c. 127, s. 1; 2004-199, s. 8; 2009-539, s. 1.)

Effect of Amendments. — Session Laws 2009-539, s. 1, effective August 28, 2009, added subdivision (5a).

§ 18B-104. Administrative penalties.

(a) Penalties. — For any violation of the ABC laws, the Commission may take any of the following actions against a permittee:

(1) Suspend the permittee's permit for a specified period of time not longer than three years;

(2) Revoke the permittee's permit;

(3) Fine the permittee up to five hundred dollars ($500.00) for the first violation, up to seven hundred fifty dollars ($750.00) for the second violation, and up to one thousand dollars ($1,000) for the third violation; or

(4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3).

(b) Compromise. — In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than five thousand dollars ($5,000). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.

(c) Fines and Penalties to Treasurer. — The clear proceeds of fines and penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Effect on Licenses. — Suspension or revocation of a permit includes automatic suspension or revocation of any related State or local revenue license.

(e) Effect on Other Permits. — Unless some other disposition is ordered by the Commission, revocation or suspension of a permit under subsection (a) includes automatic revocation or suspension, respectively, of any other ABC permit held by the same permittee for the same establishment. (1939, c. 158,

s. 514; 1943, c. 400, s. 6; 1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, ss. 7, 14; 1953, c. 1207, ss. 2-5; 1957, cc. 1048, 1440; 1963, c. 426, ss. 4, 5, 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 193; 1977, c. 669, s. 1; 1981, c. 412, s. 2; 1998-215, s. 27.)

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).

CASE NOTES

Editor's Note. — *Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Legislation for Revocation and Suspension of Permits Is Constitutional. — See Boyd v. Allen, 246 N.C. 150, 97 S.E.2d 864 (1957).

A violation of either a statute or a regulation is sufficient to support the suspension of a license. C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control, 279 N.C. 140, 181 S.E.2d 448 (1971).

A permit is a privilege granted only to those who meet the standards which the Commission has set up and may, and should, be revoked if the permittee fails to keep faith with the Commission by observing its regulations and obeying the laws of the State. J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

The law of this State under former § 18A-43 was that all acts of employees were imputed to the permittee. Dove v. North Carolina Bd. of Alcoholic Control, 37 N.C. App. 605, 246 S.E.2d 584 (1978).

Co-permittees did, as a matter of law, knowingly allow the use of their premises for an unlawful purpose where their employee sold heroin on the premises, even though there was no evidence, other than the physical proximity of one co-permittee, that either co-permittee had actual knowledge of the transaction, since all acts of employees were imputed to the permittee for the purposes of former similar section. Dove v. North Carolina Bd. of Alcoholic Control, 37 N.C. App. 605, 246 S.E.2d 584 (1978).

Cited in Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503 (1987); State v. Wilson, 127 N.C. App. 129, 488 S.E.2d 303 (1997).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions below were issued under similar provisions of former Chapter 18.*

Inquiry into Permittee's Suitability to Hold Permit at Several Locations. — See opinion of Attorney General to Mr. D.L. Pickard, Assistant Director — Hearing Officer, State Board of Alcoholic Control, 41 N.C.A.G. 50 (1970).

Authority of Commission to Regulate Advertising of Alcoholic Beverages. — See opinion of Attorney General to Mr. Lee P. Phillips, State Board of Alcoholic Control, 40 N.C.A.G. 1 (1970).

§ 18B-105. Advertising.

(a) General Rule. — No person shall advertise alcoholic beverages in this State except in compliance with the rules of the Commission.

(b) Rule-making Authority. — The Commission shall have the authority to adopt rules to:

(1) Prohibit or regulate advertising of alcoholic beverages by permittees in newspapers, pamphlets, and other print media;

(2) Prohibit or regulate advertising by on-premises permittees of brands or prices of alcoholic beverages via newspapers, radio, television, and other mass media;

(3) Prohibit deceptive or misleading advertising of alcoholic beverages;

(4) Require all advertisements of alcoholic beverages to disclose fully the identity of the advertiser and of the product being advertised;

(5) Prohibit advertisements of alcoholic beverages on the premises of a permittee, or regulate the size, number, and appearance of those advertisements;
(6) Prohibit or regulate advertisement of prices of alcoholic beverages on the premises of a permittee;
(7) Prohibit or regulate alcoholic beverage advertisements on billboards;
(8) Prohibit alcoholic beverage advertisements on outdoor signs, or regulate the nature, size, number, and appearance of those advertisements;
(9) Prohibit or regulate advertising of alcoholic beverages by mail;
(10) Prohibit or regulate contests, games, or other promotions which serve or tend to serve as advertisement for a specific brand or brands of alcoholic beverages; and
(11) Prohibit or regulate any advertising of alcoholic beverages which is contrary to the public interest. (1923, c. 1, s. 3; C.S., s. 3411(c); 1933, cc. 216, 229; 1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1957, c. 1048; 1963, c. 426, s. 10; c. 460, s. 1; 1971, c. 872, s. 1; 1981, c. 412, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Authority of Commission to Regulate Advertising. — See opinion of Attorney General to Mr. Lee P. Phillips, State A.B.C. Board, 40 N.C.A.G. 1 (1970) (issued under former Chapter 18).

§ 18B-106. Alcoholic beverages for use on oceangoing ships.

(a) Delivery Permitted. — Alcoholic beverages for use outside the United States on oceangoing vessels shall be delivered as follows:
(1) Spirituous liquor may be imported into this State under United States customs bonds, held in United States customs bonded warehouses, and transferred between those warehouses. Spirituous liquors may only be released from customs bonds for delivery to an officer or agent of an oceangoing vessel who has obtained a permit from the Commission for that purpose.
(2) Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of an oceangoing vessel. The Commission may require the officer or agent to obtain a permit before purchasing alcoholic beverages under this subdivision.

(b) Definition. — "Oceangoing vessel" means a ship which plies the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively.

(c) Rules. — The Commission may issue rules relating to applications for permits and otherwise regulate the importation, sale, and delivery of alcoholic beverages under this section to insure that those beverages are used only on oceangoing vessels outside the United States. (1981, c. 412, s. 2.)

§ 18B-107. Alcoholic beverages for use in air commerce.

(a) Purchase and Storage. — The Commission may issue permits authorizing air carriers offering regularly scheduled or chartered flights in foreign, interstate, or intrastate commerce to purchase malt beverages, unfortified wine, and fortified wine from any wholesaler or retailer licensed in this State, and to transport those alcoholic beverages. The Commission may also authorize air carriers to store, at facilities approved by the Commission, alcoholic beverages to be sold or served pursuant to subsection (b).

(b) Sale. — Air carriers may sell and serve alcoholic beverages anywhere in this State to passengers while in transit aboard any aircraft. At airports which service airplanes boarding at least 150,000 passengers annually, air carriers may serve complimentary alcoholic beverages to their passengers in air carrier passenger rooms approved by the Commission. Alcoholic beverages may not be sold in such a room unless a permit has been issued under Article 10 authorizing sale there. (1981, c. 412, s. 2.)

§ 18B-108. Sales on trains.

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually. (1981, c. 412, s. 2; c. 747, s. 37; 1985, c. 114, s. 5; 2000-140, s. 39; 2006-227, s. 8.)

§ 18B-109. Direct shipment of alcoholic beverages into State.

(a) General Prohibition. — Except as provided in G.S. 18B-1001.1, no person shall have any alcoholic beverage mailed or shipped to him from outside this State unless he has the appropriate ABC permit.

(b) Armed Forces Installation. — No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to an armed forces installation within this State if those alcoholic beverages are for resale on the installation.

(c) Wine Shipper Permittees. — It is unlawful for a wine shipper permittee to ship any wines except in compliance with this Chapter and Articles 2C and 5 of Chapter 105 of the General Statutes.

(d) On-Premises Purchases. — A person who purchases wine while visiting the premises of a winery, whether located within or outside the State, may authorize the winery to ship by common carrier, or may personally ship by common carrier, the purchased wine directly to addresses in the State in amounts that can be personally transported in accordance with the laws of this State and of the state in which the winery is located. A winery shipping wine pursuant to this subsection is not required to have a wine shipper permit. (1923, c. 1, s. 2; C.S., s. 3411(b); 1971, c. 872, s. 1; 1975, c. 654, s. 4; 1981, c. 412, s. 2; 2003-402, s. 4.)

CASE NOTES

Constitutionality. — Provisions of North Carolina's alcoholic beverage code, which prohibited out-of-state wineries from selling wine directly to North Carolina residents but allowed North Carolina wineries to make direct sales, violated the Commerce Clause, and state officials were enjoined from enforcing those provisions. Beskind v. Easley, 197 F. Supp. 2d 464, 2002 U.S. Dist. LEXIS 6045 (W.D.N.C. 2002).

Cited in Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-110. Emergency.

When the Governor finds that a "state of emergency," as defined in G.S. 14-288.1, exists anywhere in this State, he may

(1) Order the closing of all ABC stores, and

(2) Order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Governor's order shall apply in those portions of the State designated in the order, for the duration of the state of emergency. Any order by the Governor under this section shall be directed to the Chairman of the Commission and to the Secretary of Crime Control and Public Safety. (1969, c. 869, ss. 4, 5; 1971, c. 872, s. 1; 1977, c. 70, s. 21; 1977, 2nd Sess., c. 1138, s. 16; 1981, c. 412, s. 2.)

§ 18B-111. Nontaxpaid alcoholic beverages.

No person may possess, transport, or sell nontaxpaid alcoholic beverages except as authorized by the ABC law. (1981 (Reg. Sess., 1982), c. 1262, s. 4.)

§§ 18B-112 through 18B-119: Reserved for future codification purposes.

Article 1A.

Compensation for Injury Caused by Sales to Underage Persons.

§ 18B-120. Definitions.

As used in this Article:

(1) "Aggrieved party" means a person who sustains an injury as a consequence of the actions of the underage person, but does not include the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(2) "Injury" includes, but is not limited to, personal injury, property loss, loss of means of support, or death. Damages for death shall be determined under the provisions of G.S. 28A-18-2(b). Nothing in G.S. 28A-18-2(a) or subdivision (1) of this section shall be interpreted to preclude recovery under this Article for loss of support or death on account of injury to or death of the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(3) "Underage person" means a person who is less than the age legally required for purchase of the alcoholic beverage in question.

(4) "Vehicle" shall have the same meaning as prescribed by G.S. 20-4.01(49). (1983, c. 435, s. 37.)

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

For Note, Vendor Liability for the Sale of Alcohol to an Underage Person: The Untoward Consequences of Estate of Mullis v. Monroe Oil Co., see 21 Campbell L. Rev. 277 (1999).

CASE NOTES

Effect of Article. — This Article does not create a new cause of claim for loss of support or death from injury to the underage person; rather, the plain language of the statute has the effect of eliminating the underage person's contributory negligence as a bar to an aggrieved party's cause of action against the local ABC Board or the permittee. If the three requirements of G.S. 18B-121 are met, an aggrieved party may recover for the loss of support or death of the underage person. Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324 N.C. 415, 379 S.E.2d 23 (1989) (holding an underaged person does not qualify as an aggrieved party.)

Subdivision (2) of this section abolishes the common law defense of contributory negligence insofar as an aggrieved party is concerned and must be strictly construed. Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324 N.C. 415, 379 S.E.2d 23 (1989) (holding an underaged person

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Raleigh

does not qualify as an aggrieved party.)

To recover under the Dram Shop Act, an individual must be an "aggrieved party" as defined by statute. Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997), cert. denied, 347 N.C. 397, 494 S.E.2d 602 (1997).

Parents as Aggrieved Parties. — Parents of an underage drinker who died from injuries proximately resulting from his operation of a motor vehicle while impaired after consuming alcohol negligently sold by a permittee may be included within the class of "aggrieved parties" under subdivision (1) of G.S. 18B-120, and may recover damages, including damages pursuant to G.S. 28A-18-2(b). Storch v. Winn-Dixie Charlotte, Inc., 149 N.C. App. 478, 560 S.E.2d 881, 2002 N.C. App. LEXIS 199 (2002), cert. denied 355 N.C. 757, 566 S.E.2d 482 (2002).

Aggrieved Party Not Shown. — Where passenger/owner aided and abetted driver in the purchase of beer from store, he was not an "aggrieved party" within the meaning of the Dram Shop Act and his estate could not recover against seller under the Dram Shop Act. Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997), cert. denied, 347 N.C. 397, 494 S.E.2d 602 (1997).

Although passenger/owner of car did not contribute any money towards the purchase of alcohol, as he drove the purchaser to the store in his car, waited for the purchaser to return and allowed the purchaser to drive his car the passenger/owner aided and abetted in the purchase of the beer. Therefore, the claim against the store by passenger/owner's estate was barred as a matter of law by the "aided and abetted" exception to the definition of an "aggrieved party". Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997), cert. denied, 347 N.C. 397, 494 S.E.2d 602 (1997).

Cited in Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989); Clark v. Inn W., 324 N.C. 415, 379 S.E.2d 23 (1989); Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 505 S.E.2d 131 (1998).

§ 18B-121. Claim for relief created for sale to underage person.

An aggrieved party has a claim for relief for damages against a permittee or local Alcoholic Beverage Control Board if:

(1) The permittee or his agent or employee or the local board or its agent or employee negligently sold or furnished an alcoholic beverage to an underage person; and

(2) The consumption of the alcoholic beverage that was sold or furnished to an underage person caused or contributed to, in whole or in part, an underage driver's being subject to an impairing substance within the meaning of G.S. 20-138.1 at the time of the injury; and

(3) The injury that resulted was proximately caused by the underage driver's negligent operation of a vehicle while so impaired. (1983, c. 435, s. 37.)

Legal Periodicals. — For note, "The Recognition of Social Host Liability in North Carolina — Hart v. Ivey," see 15 Campbell L. Rev. 207 (1993).

CASE NOTES

Effect of Article. — This Article does not create a new cause of claim for loss of support or death from injury to the underage person; rather, the plain language of the statute has the effect of eliminating the underage person's contributory negligence as a bar to an aggrieved party's cause of action against the local ABC Board or the permittee. If the three requirements of this section are met, an aggrieved party may recover for the loss of support or death of the underage person. Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324 N.C. 415, 379 S.E.2d 23 (1989) (holding an underaged person does not qualify as an aggrieved party).

To recover under the Dram Shop Act, an individual must be an "aggrieved party" as defined by statute. Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997), cert. denied, 347 N.C. 397, 494 S.E.2d 602 (1997).

Against Whom Claim May Be Had. — This section only allows a claim for relief against the local ABC Board or a permittee. Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324 N.C. 415, 379 S.E.2d 23 (1989) (holding an underaged person does not qualify as an aggrieved party).

Personal Representative Is Not Aggrieved Party. — Personal representative of the estate of a 19-year-old who consumed alcoholic beverages and died from injuries sustained in a single-car accident could not recover damages under this section; since the decedent could not have maintained an action for his own injuries because an underage person is excluded from the definition of an aggrieved party in G.S. 18B-120(1), no claim survived his death, and therefore, his personal representative could not maintain an action under the Dram Shop Act. Clark v. Inn W., 324 N.C. 415, 379 S.E.2d 23 (1989).

Aggrieved Party Not Shown. — Where passenger/owner aided and abetted driver in the purchase of beer from store, he was not an "aggrieved party" within the meaning of the Dram Shop Act and his estate could not recover against seller under the Dram Shop Act. Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997), cert. denied, 347 N.C. 397, 494 S.E.2d 602 (1997).

Although passenger/owner of car did not contribute any money towards the purchase of alcohol, as he drove the purchaser to the store in his car, waited for the purchaser to return and allowed the purchaser to drive his car the passenger/owner aided and abetted in the purchase of the beer. Therefore, the claim against the store by passenger/owner's estate was barred as a matter of law by the "aided and abetted" exception to the definition of an "aggrieved party". Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997), cert. denied, 347 N.C. 397, 494 S.E.2d 602 (1997).

Partners of Permittee Partnership as Proper Parties. — Though the individual partners of permittee partnership were not necessary parties to dram shop claim, they were proper parties. Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324 N.C. 415, 379 S.E.2d 23 (1989) (holding an underaged person does not qualify as an aggrieved party.)

Punitive damages may be recovered against impaired drivers in certain situations without regard to the drivers' motives or intent. Huff v. Chrismon, 68 N.C. App. 525, 315 S.E.2d 711, cert. denied, 311 N.C. 756, 321 S.E.2d 134 (1984).

Claim Barred by Negligence. — Plaintiff's wrongful death claim against a provider of alcohol alleging wilful and wanton negligence for serving the visibly intoxicated decedent alcohol after being requested to refrain from serving him was barred by the decedent's own actions in driving his vehicle while highly intoxicated. Sorrells v. M.Y.B. Hospitality Ventures, 332 N.C. 645, 423 S.E.2d 72 (1992).

Jury Instruction and Proximate Cause. — In a wrongful death suit based on a restaurant's serving alcohol to a minor, the jury was properly instructed on the restaurant's theory that the minor's intentionally chasing another car was unforeseeable, and thus the restaurant's serving alcohol to him was not the proximate cause of the injuries. Kane v. Crowley's at Stonehenge, Inc., 144 N.C. App. 409, 547 S.E.2d 824, 2001 N.C. App. LEXIS 420 (2001).

Cited in Freeman v. Finney, 65 N.C. App. 526, 309 S.E.2d 531 (1983); Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989); Smith v. Winn-Dixie Charlotte, Inc., 142 N.C. App. 255, 542 S.E.2d 288, 2001 N.C. App. LEXIS 87 (2001); Durham Video & News, Inc. v. Durham Bd. of Adjustment, 144 N.C. App. 236, 550 S.E.2d 212, 2001 N.C. App. LEXIS 426 (2001).

§ 18B-122. Burden of proof and admissibility of evidence.

The plaintiff shall have the burden of proving that the sale or furnishing of the alcoholic beverage to the underage person, as defined, was, under the circumstances, negligent. Proof of the sale or furnishing of the alcoholic beverage to an underage person, as defined, without request for identification shall be admissible as evidence of negligence. Proof of good practices (including but not limited to, instruction of employees as to laws regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons concerning laws regarding the purchase or furnishing of alcoholic beverages, or detention of a person's identification documents in accordance with G.S. 18B-129 and inquiry about the age or degree of intoxication of the person), evidence that an underage person misrepresented his age, or that the sale or furnishing was made under duress is admissible as evidence that the permittee was not negligent. (1983, c. 435, s. 37.)

CASE NOTES

Violation of former § 18A-8 was negligence per se. Freeman v. Finney, 65 N.C. App. 526, 309 S.E.2d 531 (1983), cert. denied, 310 N.C. 744, 315 S.E.2d 702 (1984).

§ 18B-123. Limitation on damages.

The total amount of damages that may be awarded to all aggrieved parties pursuant to any claims for relief under this Article is limited to no more than five hundred thousand dollars ($500,000) per occurrence. When all claims arising out of an occurrence exceed five hundred thousand dollars ($500,000), each claim shall abate in the proportion it bears to the total of all claims. (1983, c. 435, s. 37.)

CASE NOTES

Cited in Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

§ 18B-124. Joint and several liability.

The liability of the negligent driver or owner of the vehicle that caused the injury and the permittee or ABC board which sold or furnished the alcoholic beverage shall be joint and several, with right of contribution but not indemnification. (1983, c. 435, s. 37.)

§ 18B-125. Exceptions.

This Article does not create a claim for relief against the following:

(1) One who holds only a brown bagging permit, a special occasions permit, or a limited special occasions permit;
(2) One who holds only a special one-time permit under G.S. 18B-1002;
(3) One who holds only permits listed in G.S. 18B-1100;
(4) One who holds any combination of the permits listed in this section. (1983, c. 435, s. 37.)

§ 18B-126. Statute of limitations.

The statute of limitations is as provided in G.S. 1-54. (1983, c. 435, s. 37.)

CASE NOTES

Cited in Smith v. Winn-Dixie Charlotte, Inc., 142 N.C. App. 255, 542 S.E.2d 288, 2001 N.C. App. LEXIS 87 (2001).

§ 18B-127. Duty of clerk of superior court.

When execution on a judgment on a cause of action under G.S. 18B-121 is returned unsatisfied, in whole or in part, the clerk of superior court to whom such return is made shall transmit to the Commission certified copies of the judgment, the execution and return and any other proceedings upon the judgment. (1983, c. 435, s. 37.)

§ 18B-128. Common-law rights not abridged.

The creation of any claim for relief by this Article may not be interpreted to abrogate or abridge any claims for relief under the common law, but this Article does not authorize double recovery for the same injury. (1983, c. 435, s. 37.)

§ 18B-129. No liability for refusal to sell or for holding documents.

(a) No permittee or his agent or employee may be held liable for damages resulting from the refusal to sell or furnish an alcoholic beverage to a person who fails to show proper identification as described in G.S. 18B-302(d), or who appears to be an underage person.

(b) No permittee or his agent or employee may be held civilly liable if the permittee or his agent or employee holds a customer's identification documents for a reasonable length of time in a good faith attempt to determine whether the customer is of legal age to purchase an alcoholic beverage, provided the permittee or his agent or employee informs the customer of the reason for his actions. (1983, c. 435, s. 37.)

§§ 18B-130 through 18B-199: Reserved for future codification purposes.

Article 2.

State Administration.

§ 18B-200. North Carolina Alcoholic Beverage Control Commission.

(a) Creation of Commission; compensation. — The North Carolina Alcoholic Beverage Control Commission is created to consist of a chairman and two associate members. The chairman shall devote his full time to his official duties and receive a salary fixed by the General Assembly in the Current Operations Appropriations Act. The associate members shall be compensated for per diem, subsistence and travel as provided in Chapter 138 of the General Statutes.

(b) Appointment of Members. — Members of the Commission shall be appointed by the Governor to serve at his pleasure.

(c) Vacancy. — The Governor shall fill any vacancy on the Commission by appointing a successor to serve at the Governor's pleasure. If the chairman's seat becomes vacant, the Governor may designate either the new member or an existing member of the Commission as the chairman.

(d) Employees. — The Commission may authorize the chairman to employ, discharge, and otherwise supervise subordinate personnel of the Commission. The Commission shall appoint at least one employee to make investigations, hold hearings requested under G.S. 18B-1205, and represent the Commission in contested case hearings or perform any other duties authorized by Chapter 150B. (1937, c. 49, ss. 2, 3; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1963, c. 916, s. 1; 1965, c. 1102, ss. 1, 2; 1969, c. 294, ss. 1, 2; 1971, c. 872, s. 1; 1979, c. 336; 1981, c. 412, s. 2; 1983, c. 717, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 827, s. 1; 1993, c. 415, s. 3.)

§ 18B-201. Conflict of interest.

(a) Financial Interests Restricted. — No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. — The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. — Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member's spouse or any person related to him by blood to a degree of first cousin or closer in any way benefits, directly or indirectly, from the transaction unless:

(1) The member whose relative benefits from the transaction abstains from participating in any way, including voting, in the decision;

(2) The minutes of the meeting at which the final decision is reached specifically note the member whose spouse or relative is benefited and the amount involved in each transaction;

(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and

(4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction. (1981, c. 412, s. 2; 1993, c. 415, s. 4.)

Editor's Note. — Session Laws 1981, c. 412, s. 7, provided that all local, public-local, and private acts in conflict with this section would be repealed.

OPINIONS OF ATTORNEY GENERAL

Conflict of Interest by Reason of Relationship. — See opinion of Attorney General to Morrison McKenzie, 41 N.C.A.G. 330 (1971) (issued under similar provisions of former Chapters 18 and 18A).

§ 18B-202. Discharge upon conviction.

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. (1981, c. 412, s. 2.)

Cross References. — For provision making the unauthorized manufacture, sale, delivery, etc., of alcoholic beverages a misdemeanor, see G.S. 18B-102.

§ 18B-203. Powers and duties of the Commission.

(a) Powers. — The Commission shall have authority to:

(1) Administer the ABC laws;

(2) Provide for enforcement of the ABC laws, in conjunction with the ALE Division;

(3) Set the prices of alcoholic beverages sold in local ABC stores as provided in Article 8;
(4) Require reports and audits from local boards as provided in G.S. 18B-205;
(5) Determine what brands of alcoholic beverages may be sold in this State;
(6) Contract for State ABC warehousing, as provided in G.S. 18B-204;
(7) Dispose of damaged alcoholic beverages, as provided in G.S. 18B-806;
(8) Remove for cause any member or employee of a local board;
(9) Supervise or disapprove purchasing by any local board and inspect all records of purchases by local boards;
(10) Approve or disapprove rules adopted by any local board;
(11) Approve or disapprove the opening and location of ABC stores, as provided in Article 8;
(12) Issue ABC permits, and impose sanctions against permittees;
(13) Provide for the testing of alcoholic beverages, as provided in G.S. 18B-206;
(14) Fix the amount of bailment charges and bailment surcharges to be assessed on liquor shipped from a Commission warehouse;
(15) Collect bailment charges and bailment surcharges from local boards;
(16) Notwithstanding any law to the contrary, enter into contracts for design and construction of a warehouse or warehouses and supervise work and materials used in the construction, as provided in G.S. 18B-204;
(17) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the installation;
(18) Provide for the distribution and posting of warning signs to local ABC boards regarding the dangers of alcohol consumption during pregnancy as required under G.S. 18B-808;
(19) Recognize the holder of a wine importer permit or nonresident wine vendor permit as a primary American source of supply for the wine of a winery. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States.

(b) Implied Powers. — The Commission shall have all other powers which may be reasonably implied from the granting of the express powers stated in subsection (a), or which may be incidental to, or convenient for, performing the duties given to the Commission. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; c. 747, s. 38; 1981 (Reg. Sess., 1982), c. 1285, s. 2; 1987, c. 136, s. 1; 2003-339, s. 1; 2006-227, s. 10.)

Legal Periodicals. — As to making of necessary rules and regulations, see 15 N.C.L. Rev. 323 (1937).

As to power of Board to grant, deny, or revoke permits, see 15 N.C.L. Rev. 328 (1937).

For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

Editor's Note. — *Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Section Empowers Commission to Issue Permits. — This section provides for the issuance of permits by the Commission, and except as authorized by the legally issued permit, sales, etc., of alcoholic beverages are made unlawful. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

Unless Permit Authorizes Violation of Restrictions Fixed by Chapter. — The Commission has no power to issue a permit which authorizes the holder to violate the restrictions fixed by this Chapter. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

Power of Investigation. — The Commission can conduct, without traditional probable cause, an investigation of a distillery representative's books and records pertaining to promotional activities in North Carolina for his employer. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

The investigative demand must be reasonable and specific in directive so that compliance is not unreasonably burdensome. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

The information sought must be relevant to a lawful subject of investigation. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

The purpose of an administrative investigation is to protect the public; therefore, the public's interest in applying more relaxed criteria for administrative investigations is greater than the regulated person's, firm's or corporation's right to privacy. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

The Commission is not required to have evidence that petitioner has violated its rules and regulations before it undertakes an investigation of him. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

An administrative agency is empowered to conduct inquiries to whatever extent is reasonably necessary to make the power of investigation effective. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

The Commission, even if it has no probable cause, may require a distillery representative to produce relevant business books and records without abridging his constitutional rights under U.S. Const., Amend. IV. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

Due Process Required for License Revocation. — A license to engage in a business or practice a profession is a property right that cannot be suspended or revoked without due process of law. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

§ 18B-204. State warehouse.

(a) Contracting for Private Warehouse. — The Commission shall provide for the receipt, storage, and distribution of spirituous liquor by one of the following methods:

(1) By negotiated contract with a privately owned warehouse;

(2) By negotiated contract with privately owned warehouses in several regions of the State. The Commission shall choose locations for the warehouses to promote efficient distribution of spirituous liquor to all local boards, to maintain control of that liquor, and to insure the Commission's supervision of warehousing procedures; or

(3) By the construction of a warehouse, and by contracting for receipt, storage and distribution of spirituous liquor by an independent contractor, by negotiated contract or by the use of procedures for purchase and contract by State agencies, for the operation of that warehouse.

(b) Audits and Inspections. — Contracts entered into pursuant to this section shall provide the following:

(1) That an annual audited financial statement be prepared and submitted to the Commission by the person contracting with the Commission;

(2) That all warehouse records be available for inspection at all times by the Commission and the Department of Revenue; and

(3) That all warehouse accounts relating to the receipt, storage, or distribution of spirituous liquor be subject to audit by the State Auditor.

(c) Emergency or Temporary Operation. — If the independent operator of a warehouse changes, or if some other occurrence results in substantially impeded distribution of spirituous liquor from a warehouse, the Commission may operate that warehouse on an interim emergency or temporary basis.

(d) Rules. — The Commission may adopt rules regarding warehouse operations, and violations of those rules by a party with whom the Commission contracts shall be grounds for termination by the Commission of a contract entered into under this section. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 3; 1987, c. 136, s. 2.)

§ 18B-205. Accounts and reports required.

(a) Accounts and Reports. — The Commission may require local boards to submit quarterly mixed beverage reports, quarterly and annual audits, monthly sales records, and any other reports or audits relating to the operations of the local ABC systems.

(b) Accounting System. — The Commission may require local boards to use generally accepted accounting standards and a chart of accounts prescribed by the Commission in the operation of ABC stores, and to record all information necessary and useful to the Commission in auditing the operation of ABC systems and administering the ABC law.

(c) Audits. — The Commission may audit the operation of any local ABC store or board, and the books of those stores and boards shall remain open to the Commission for inspection. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2.)

Editor's Note. — Session Laws 1981, c. 412, s. 7, provided that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-206. Standards for alcoholic beverages.

(a) Authority to Set Standards. — The Commission may set standards and adopt rules for malt beverages, unfortified wine, fortified wine, and spirituous liquor to protect the public against beverages containing harmful or impure substances, beverages containing an improper balance of substances as determined by the Commission, spurious or imitation beverages, and beverages unfit for human consumption. In setting standards and in issuing rules relating to them, the Commission may follow federal guidelines for standards of identity, labeling and advertising contained in Title 27 of the Code of Federal Regulations, or may adopt more restrictive standards.

(b) Effective Date of Standards. — A person possessing alcoholic beverages which do not meet a new standard set by the Commission shall have 60 days after the effective date of the standard to sell or otherwise dispose of those alcoholic beverages.

(c) Testing. — The Commission may test malt beverages, unfortified wine, fortified wine, and spirituous liquor possessed or offered for sale in this State to determine whether they meet the standards set by the Commission. If the Commission chooses to test an alcoholic beverage, that test may be performed by the Commission, the Commission may arrange for the State Chemist to perform the testing, or the Commission may have the testing performed in some other manner. The manufacturer of tested alcoholic beverages shall pay the costs of the test. In lieu of testing an alcoholic beverage, the Commission may rely on testing by a federal agency or an agency of another state or may accept test results from a federal agency, an agency of another state, or the manufacturer of the alcoholic beverage or his authorized agent. A manufacturer who submits test results shall also submit a fee of ten dollars ($10.00) for each test result to cover administrative costs. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5; 1971, c. 872, s. 1; 1977, c. 70, s. 20.4; 1981, c. 412, s. 2.)

§ 18B-207. Rules.

The Commission shall have authority to adopt, amend, and repeal rules to carry out the provisions of this Chapter. Those rules shall become effective when adopted and filed pursuant to the provisions of Chapter 150B of the General Statutes. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1987, c. 827, s. 1.)

CASE NOTES

Construction of Regulations. — The Commission's regulations are not criminal statutes to be strictly construed. They are civil regulations to be reasonably interpreted so as to accomplish the legitimate purposes for which they are issued. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 639 (1976) (decided under similar provisions of former Chapter 18A).

§ 18B-208. ABC Commission bonds and funds.

(a) Issuance of Bonds. — As a means of raising the funds needed from time to time in the design, acquisition, construction, equipping, maintenance and operation of a warehouse under G.S. 18B-204(a)(3), the Commission may, with the approval of the Governor, at one time or from time to time issue negotiable revenue bonds of the Commission. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation or to make any appropriation for their payment. Revenue bonds issued pursuant to this subsection shall be repaid from the bailment surcharge as provided in subsection (b). These bonds and the income from them are exempt from all taxation within the State.

(b) Special Fund. — A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the State Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission and the retirement of bonds issued for construction of a Commission warehouse and offices. Upon payment of the bonds issued pursuant to this section, the Commission shall reduce the bailment surcharge to an amount no greater than necessary to pay operating expenses of the Commission as authorized by the General Assembly.

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with plans approved by the North Carolina ABC Commission and the Director of the Budget, and all these funds are appropriated, reserved, set aside, and made available until expended for the administration of the ABC law. (1981 (Reg. Sess., 1982), c. 1285, s. 4; 1983, c. 761, s. 133; 1987, c. 832, s. 1; 1989, c. 800 s. 6; 2006-203, s. 13.)

CASE NOTES

Bailment surcharge imposed on each case of distilled spirits shipped from ABC warehouse to ABC stores is not a tax; the cost of liquor enforcement is a burden incident to the privilege of buying spirituous liquors in the state and such a surcharge is not unconstitutional as a tax imposed in violation of N.C. Const., Art. II, § 23, or of N.C. Const., Art. V, § 2. North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693, cert. denied, 314 N.C. 667, 336 S.E.2d 400 (1985).

§§ 18B-209 through 18B-299: Reserved for future codification purposes.

ARTICLE 3.

Sale, Possession, and Consumption.

§ 18B-300. Purchase, possession and consumption of malt beverages and unfortified wine.

(a) Generally. — Except as otherwise provided in this Chapter, the purchase, consumption, and possession of malt beverages and unfortified wine by individuals 21 years old and older for their own use is permitted without restriction.

(b) Consumption at Off-Premises Establishment. — It shall be unlawful to consume, or for a permittee to allow the consumption of, malt beverages or unfortified wine on any premises having only an off-premises permit for the kind of alcoholic beverage being consumed.

(c) Local Ordinance. — A city or county may by ordinance:

(1) Regulate or prohibit the consumption of malt beverages and unfortified wine on the public streets in that city or county by persons who are not occupants of motor vehicles and on property owned, occupied, or controlled by that city or county;

(2) Regulate or prohibit the possession of open containers of malt beverages and unfortified wine on public streets in that city or county by persons who are not occupants of motor vehicles and on property owned, occupied, or controlled by that city or county; and

(3) Regulate or prohibit the possession of malt beverages and unfortified wine on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events.

For the purposes of this subsection, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container. As provided by G.S. 18B-102(a), possession or consumption of alcoholic beverages is unlawful except as authorized by the ABC law. (1939, c. 158, s. 503; 1971, c. 872, s. 1; 1973, c. 1452, ss. 1-3; 1977, c. 176, ss. 2, 3; c. 693; 1979, c. 19, s. 2; c. 445, s. 4; c. 893, s. 11; 1981, c. 412, s. 2; 1983, c. 435, s. 32; 1985, c. 141, s. 1; 1995, c. 144, s. 1; c. 366, s. 2; 2001-79, s. 1.)

Local Modification. — Town of Beaufort: 1985, c. 293.

Editor's Note. — Session Laws 1985, c. 141, which amended this section effective September 1, 1986, in s. 6 provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4, and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4, and 5 shall revert to the form they would have without the amendments made by these sections.

CASE NOTES

Municipal Ordinance Held Invalid. — A municipal ordinance providing that "No person shall have open and in his possession, . . . beer, . . . on or in the public streets" conflicted with former G.S. 18A-35(a); therefore, the municipal ordinance was invalid, and warrants drawn thereunder charging defendants with the possession of open beer were properly quashed. State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973) (decided under similar provisions of former Chapter 18A).

Cited in State v. Swift, 105 N.C. App. 550, 414 S.E.2d 65 (1992).

§ 18B-301. Possession and consumption of fortified wine and spirituous liquor.

(a) Possession at Home. — It shall be lawful, without an ABC permit, for any person at least 21 years old to possess for lawful purposes any amount of fortified wine and spirituous liquor at his home or a temporary residence, such as a hotel room.

(b) Possession on Other Property. — It shall be lawful, without an ABC permit, for a person to possess for his personal use and the use of his guests not more than eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, at the following places:

(1) The residence of any other person with that person's consent;
(2) Any other property not primarily used for commercial purposes and not open to the public at the time the alcoholic beverage is possessed, if the owner or other person in charge of the property consents to that possession and consumption;
(3) An establishment with a brown-bagging permit as defined in G.S. 18B-1001(7).

(c) Special Occasions. — It shall be lawful for a person to possess, without a permit and not for sale, any amount of fortified wine or spirituous liquor for a private party, private reception, or private special occasion, at the following places:

(1) His home or a temporary residence, such as a hotel room;
(2) Any other property not primarily used for commercial purposes, which is under his exclusive control and supervision, and which is not open to the public during the event;
(3) The licensed premises of any business for which the Commission has issued a special occasions permit under G.S. 18B-1001(8), if he is the host of that private function and has the permission of the permittee.

(d) Consumption. — It shall be lawful for a person to consume fortified wine and spirituous liquor in any place where it is lawful for him to possess those alcoholic beverages under subsections (a) through (c).

(e) Incident to Sale. — It shall be lawful to possess fortified wine and spirituous liquor at any place, such as an ABC store, where possession is a necessary incident to lawful sale. Consumption at such a place shall be unlawful unless the establishment has a permit authorizing consumption on the premises as well as sale.

(f) Unlawful Possession or Use. — As illustration, but not limitation, of the general prohibition stated in G.S. 18B-102(a), it shall be unlawful for:

(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person:
   a. On the premises of an ABC store, or
   b. Upon any property used or occupied by a local board, or
   c. On any public road, street, highway, or sidewalk.

(2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;

(3) Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;

(4) Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;

(5) Any person to possess on any of the premises described in subsections (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter;

(6) Any permittee, other than a mixed beverage or culinary permittee, to possess spirituous liquor or mixed beverages on his licensed premises.

(7) Any person to possess on his person or consume malt beverages or unfortified wine upon any property owned or leased by a local board of education and used by the local board of education for school purposes. Provided, however, the prohibition in G.S. 18B-102(a) and this subdivision shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; c. 747, s. 39; 1983, c. 917, s. 1; 1985, c. 566, s. 1; 1991, c. 459, s. 1; 1993, c. 508, s. 1; 1995, c. 372, s. 1.)

Editor's Note. — Session Laws 1983, c. 917, s. 1, which added subdivision (7) of subsection (f), amended G.S. 18-301, which had been repealed, but it was clearly intended to amend G.S. 18B-301.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

Classification of Establishments Requiring Brown-Bagging Permits. — Classification of establishments requiring brown-bagging permits is legislative, and not legal. Hursey v.

Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974), (decided under similar provisions of former Chapter 18A).

Where the legislature makes the classification, the courts are not authorized to supplant the legislative intent and purpose by substituting their own. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974), (decided under similar provisions of former Chapter 18A).

Burden on Plaintiff to Show Unreasonable Classification. — The legislature is presumed to have provided for a reasonable classification and the burden is on the plaintiff to show the classification is unreasonable. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974), (decided under similar provisions of former Chapter 18A).

§ 18B-302. Sale to or purchase by underage persons.

(a) Sale. — It shall be unlawful for any person to:

(1) Sell malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(a1) Give. — It shall be unlawful for any person to:

(1) Give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase, Possession, or Consumption. — It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

(c) Aider and Abettor.

(1) By Underage Person. — Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a), (a1), or (b) of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age. — Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a), (a1), or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Defense. — It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(3) Shows that at the time of purchase, the purchaser utilized a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document.

(e) Fraudulent Use of Identification. — It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this section, by using or attempting to use any of the following:

(1) A fraudulent or altered drivers license.
(2) A fraudulent or altered identification document other than a drivers license.
(3) A drivers license issued to another person.
(4) An identification document other than a drivers license issued to another person.
(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section.

(f) Allowing Use of Identification. — It shall be unlawful for any person to permit the use of the person's drivers license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. — The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person convicted and any other information requested by the Division if the person is convicted of any of the following:
(1) A violation of subsection (e) or (f) of this section.
(2) A violation of subsection (c) of this section.
(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.
(4) A violation of subsection (a1) of this section.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. — Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(i) Purchase, Possession, or Consumption by 19 or 20-Year Old. — A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.

(j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.

(k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8), or (11). (1933, c. 216, s. 8; 1959, c. 745, s. 1; 1967, c. 222, s. 3; 1969, c. 998; 1971, c. 872, s. 1; 1973, c. 27; 1977, 2nd Sess., c. 1138, s. 2; 1979, c. 683, s. 2; 1981, c. 412, s. 2; c. 747, ss. 40, 41; 1983, c. 435, ss. 32, 35; c. 740, ss. 1, 2; Ex. Sess., c. 5; 1985, c. 141, ss. 2-3; 1993, c. 539, s. 311; 1994, Ex. Sess., c. 24, s. 14(c); 1999-406, s. 7; 2001-461, ss. 2, 3; 2001-487, s. 42(b); 2005-350, s. 6(a); 2006-253, s. 26; 2007-537, s. 1.)

Editor's Note. — Session Laws 1985, c. 141, which amended this section effective September 1, 1986, in s. 6 provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4, and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4, and 5 shall revert to the form they would have without the amendments made by these sections.

Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

For survey of developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

For note, "Vendor Liability for the Sale of Alcohol to an Underage Person: The Untoward Consequences of Estate of Mullis v. Monroe Oil Co.," see 21 Campbell L. Rev. 277 (1999).

CASE NOTES

The statutory scheme as set out in the present Chapter 18B prohibits any sale, possession or giving of alcohol or malt beverages to an underaged person or aiding and abetting the sale or possession whether by a legally licensed commercial vendor, the county bootlegger or a neighbor down the street. Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914, modified on other grounds, 332 N.C. 299, 420 S.E.2d 174 (1992).

Consumption Does Not Qualify as Possession. — State did not provide substantial evidence sufficient to convict defendant of possession of a malt beverage by a person less than 21-years-old and, thus, defendant could not be convicted of that offense. Too, although defendant was charged with consumption of a malt beverage by a person less than 21-years-old in violation of G.S. 18B-302(b)(3), it did not pursue that charge at trial and consumption, which meant "to drink," did not qualify as possession such that defendant could be convicted of possessing a malt beverage based on defendant's consumption of it. State v. Hensley, 190 N.C. App. 600, 661 S.E.2d 18, 2008 N.C. App. LEXIS 1014 (2008).

Classification of Offense. — Trial court did not err in assigning one point in defendant's prior record level calculation under G.S. 15A-1340.14(b)(5) for conviction of purchase or possession of beer or wine under G.S. 18B-302, as any person who violated any provision of the chapter at issue was guilty of a class one misdemeanor. State v. Frady, 175 N.C. App. 393, 623 S.E.2d 346, 2006 N.C. App. LEXIS 53 (2006).

Violation Not Negligence Per Se. — This section is not a public safety statute; a violation is not negligence per se. Hart v. Ivey, 332 N.C. 299, 420 S.E.2d 174 (1992).

This statute is not a public safety statute; thus, a violation of this section is not negligence per se. Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 488 S.E.2d 830 (1997), aff'd, 349 N.C. 196, 505 S.E.2d 131 (1998).

A negligence per se claim could not have been maintained by the decedent against the vendors of alcoholic beverages based on the vendors' violation of the statute prohibiting sale of such beverages to underage persons; thus, the estate could not maintain wrongful death action. Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 505 S.E.2d 131 (1998).

Any violation or conspiracy by defendant-minor to violate this section did not constitute negligence per se. Smith v. Winn-Dixie Charlotte, Inc., 142 N.C. App. 255, 542 S.E.2d 288, 2001 N.C. App. LEXIS 87 (2001), cert. denied, 353 N.C. 452, 548 S.E.2d 528 (2001).

Duty of Social Hosts Not to Serve to Intoxicated Person. — Defendants were under a duty to the people who travel on the public highways not to serve alcohol to an intoxicated individual who was known to be driving, and automobile accident victim stated a claim for relief based on established negligence principles. Hart v. Ivey, 332 N.C. 299, 420 S.E.2d 174 (1992).

Estate of accident victim could not maintain a wrongful death action against vendors where the estate could not show that had victim lived, she could have maintained a negligence per se action based on a violation of this section, or an action under common law negligence based on the selling of alcohol to underage persons in violation of G.S. 18B-102. Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 488 S.E.2d 830 (1997), aff'd, 349 N.C. 196, 505 S.E.2d 131 (1998).

Evidence Insufficient for Conviction. — Trial court should have granted defendant's motion to dismiss the charge against defendant of possession of a malt beverage by a person less than 21-years-old in violation of G.S. 18B-302(b)(1) as the State did not introduce substantial evidence that defendant had actual or constructive possession of a beverage that qualified as a malt beverage. State v. Hensley, 190 N.C. App. 600, 661 S.E.2d 18, 2008 N.C. App. LEXIS 1014 (2008).

Cited in State v. Carter, 318 N.C. 487, 349 S.E.2d 580 (1986); Clark v. Inn W., 89 N.C. App. 275, 365 S.E.2d 682 (1988); Clark v. Inn W., 324 N.C. 415, 379 S.E.2d 23 (1989); State v. Powell, 336 N.C. 762, 446 S.E.2d 26 (1994); In re Kiser, 126 N.C. App. 206, 484 S.E.2d 441 (1997); State v. Wilson, 127 N.C. App. 129, 488 S.E.2d 303 (1997).

§ 18B-302.1. Penalties for certain offenses related to underage persons.

(a) A violation of G.S. 18B-302(a) or (a1) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(b) A violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(c) In addition to the punishments imposed under this section, the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505. (1999-433, s. 1; 2007-537, s. 2.)

Editor's Note. — Session Laws 1999-433, s. 1, was enacted as G.S. 18B-302A, and was renumbered as this section at the direction of the Revisor of Statutes.

§ 18B-303. Amounts of alcoholic beverages that may be purchased.

(a) Purchases Allowed. — Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined.

(b) Unlawful Purchase. — Except as provided in subsection (c) and in Article 11, it shall be unlawful for any person to purchase, or for any person to sell, an amount of alcoholic beverages greater than that stated in subsection (a).

(c) Greater Amounts. — Amounts of alcoholic beverages greater than those listed in subdivisions (a)(3) and (a)(4) may be purchased with a purchase-transportation permit under G.S. 18B-403. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; 1989, c. 553, s. 1; 1993, c. 508, s. 2; 2001-262, s. 5; 2006-253, s. 3.2.)

§ 18B-304. Sale and possession for sale.

(a) Offense. — It shall be unlawful for any person to sell any alcoholic beverage, or possess any alcoholic beverage for sale, without first obtaining the applicable ABC permit and revenue licenses.

(b) Prima Facie Evidence. — Possession of the following amounts of alcoholic beverages, without a permit authorizing that possession, shall be prima facie evidence that the possessor is possessing those alcoholic beverages for sale:

(1) More than 80 liters of malt beverages, other than draft malt beverages in kegs;
(2) More than eight liters of spirituous liquor; or
(3) Any amount of nontaxpaid alcoholic beverages. (1913, c. 44, s. 2; 1915, c. 97, s. 8; 1923, c. 1, ss. 2, 6, 10; C.S., ss. 3379, 3411(b), (f), (j); 1937, c. 49, ss. 13, 15; 1945, c. 635; 1949, c. 1251, s. 2; 1951, c. 850; 1955, c. 560; 1957, c. 984; c. 1235, s. 1; 1963, c. 932; 1967, c. 222, ss. 4, 6; 1969, c. 789; 1971, c. 872, s. 1; 1975, c. 654, s. 4; 1977, c. 176, ss. 1-3; 1981, c. 412, s. 2; c. 747, s. 42; 1989, c. 553, s. 2; 1993, c. 508, s. 3.)

Legal Periodicals. — For discussion of the wisdom of permitting proof of possession to raise a presumption of unlawful handling for gain, see 5 N.C.L. Rev. 302 (1927).

CASE NOTES

***Editor's Note.** — Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Constitutionality. — See State v. Brown, 170 N.C. 714, 86 S.E. 1042 (1915); State v. Randall, 170 N.C. 757, 87 S.E. 227 (1915); State v. Langley, 209 N.C. 178, 183 S.E. 526 (1936).

Liberal Construction. — See State v. Hammond, 188 N.C. 602, 125 S.E. 402 (1924).

"Prima Facie Evidence." — The words "prima facie evidence" are defined in Webster's International Dictionary as meaning "evidence sufficient, in law, to raise a presumption of fact or establish the fact in question, unless rebutted." It must presume that the legislature had such meaning in mind when such words were used in the statute. State v. Russell, 164 N.C. 482, 80 S.E. 66 (1913).

Prima facie evidence neither conclusively determines the guilt or innocence of the party who is accused nor withdraws from the jury the right and duty of passing upon and deciding the issue to be tried. The burden of proof remains continually upon the State to establish the accusation which it makes, as prima facie evidence does not change or shift the burden. State v. Russell, 164 N.C. 482, 80 S.E. 66 (1913).

While the prima facie case, unexplained, is sufficient to sustain a verdict of guilty, yet the defendant is not required to show, by the greater weight of evidence, that the whiskey was in his possession for lawful purposes, for such, in effect, would require him to establish his own innocence and relieve the State of the burden of the issue, which is placed upon it. State v. Wilkerson, 164 N.C. 431, 79 S.E. 888 (1913).

Where there is evidence that the defendant indicted under this section had in his possession sufficient spirituous liquors to raise the prima facie presumption that it was for the purpose of sale, it was competent to show this intent, and in furtherance of the presumption, that soon thereafter, about two months later, he was found working on a copper still on his premises, and had copper enough to make two of them; and that, upon his premises being searched, he had falsely denied the possession and had attempted to shoot the officer making the search. State v. Simmons, 178 N.C. 679, 100 S.E. 239 (1919).

The possession of more than one gallon (now eight liters) of intoxicating (now spirituous) liquor is prima facie evidence of possession for the purpose of sale under this section, and is sufficient to take the case to the jury on the issue. State v. Tate, 210 N.C. 168, 185 S.E. 665 (1936).

In a prosecution for the unlawful possession of intoxicating (now spirituous) liquor for the purpose of sale, evidence that defendant, who resided four miles from the still, came to the still and got one-half gallon of nontaxpaid whiskey and left with it, is sufficient to make out a prima facie case for the jury. State v. Graham, 224 N.C. 347, 30 S.E.2d 151 (1944).

For evidence sufficient to make out prima facie case against defendant, see State v. Buchanan, 233 N.C. 477, 64 S.E.2d 549 (1951).

The evidence was sufficient to carry the case to the jury on the charge of unlawful possession of whiskey and beer for the purpose of sale. State v. Mills, 246 N.C. 237, 98 S.E.2d 329 (1957).

Power of Legislature to Change Rule of Evidence. — See full discussion in State v. Wilkerson, 164 N.C. 431, 79 S.E. 888 (1913).

Possession may be either actual or constructive within the meaning of this section. State v. Parker, 234 N.C. 236, 66 S.E.2d 907 (1951); State v. Rogers, 252 N.C. 499, 114 S.E.2d 355 (1960).

This section intends that the "possession" shall be construed as either actual or constructive; so that the possession by the agent will be deemed the possession of the principal for the purpose of the act. State v. Lee, 164 N.C. 533, 80 S.E. 405 (1913); State v. Buchanan, 233 N.C. 477, 64 S.E.2d 549 (1951).

Evidence tending to show that 96 gallons of liquor were found in the basement of the tenant house on defendant's farm and tending to show that he alone had key to the door to the basement is sufficient to support constructive possession. State v. Parker, 234 N.C. 236, 66 S.E.2d 907 (1951).

If the liquor was within the power of the defendant, in such a sense that he could and did command its use, the possession was as complete within the meaning of the statute as if his possession had been actual. State v. Buchanan, 233 N.C. 477, 64 S.E.2d 549 (1951).

If nontaxpaid whiskey is on a person's premises with his knowledge and consent, he has constructive possession thereof while it remains on premises under his exclusive control. State v. Thompson, 256 N.C. 593, 124 S.E.2d 728, cert. denied, 371 U.S. 820, 83 S. Ct. 36, 9 L. Ed. 2d 60 (1962).

Possession as Evidence of Sale. — See State v. McAllister, 187 N.C. 400, 121 S.E. 739 (1924); State v. Knight, 188 N.C. 630, 125 S.E. 406 (1924); State v. Pierce, 192 N.C. 766, 136 S.E. 121 (1926); State v. Parker, 234 N.C. 236, 66 S.E.2d 907 (1951).

Possession for Use of Owner. — The mere possession of spirituous liquor in the home for the use of the owner, his family and their guests on the premises in the absence of a count in the indictment charging that it was for prohibited purposes is not made unlawful. State v. Mull, 193 N.C. 668, 137 S.E. 866 (1927).

The law permits an individual to possess in his home an unlimited quantity of taxpaid intoxicating (now spirituous) liquor for his own use and that of his bona fide guests, but the possession of more than one gallon (now eight liters) is prima facie evidence that such liquor is for the purpose of sale. State v. Causby, 269 N.C. 747, 153 S.E.2d 467 (1967).

Possession of Nontaxpaid Liquor. — Possession of nontaxpaid liquor is prima facie evidence that such liquor is kept for the purpose of being sold. State v. Tessnear, 265 N.C. 319, 144 S.E.2d 43 (1965).

From the mere possession of nontaxpaid whiskey, this section authorizes, but does not compel, the jury to infer that the possessor intended to sell the whiskey. State v. Tessnear, 265 N.C. 319, 144 S.E.2d 43 (1965).

Burden of Proof. — The possession of the specified quantity of spirituous liquors sufficient to make out prima facie evidence of an unlawful purpose is only sufficient to sustain a verdict of guilty, and does not shift the burden upon the defendant to show his innocence, and an instruction to that effect is reversible error. State v. Helms, 181 N.C. 566, 107 S.E. 228 (1921).

Where the possession of the specified quantities of intoxicating liquors under a statutory provision has made out prima facie evidence of guilt, and the defendant has not introduced evidence, an instruction to the jury placing the burden on the defendant to establish his innocence is reversible error, being equivalent to directing a verdict, which is not permissible in a criminal case. State v. Helms, 181 N.C. 566, 107 S.E. 228 (1921).

Evidence Sufficient to Warrant Finding that Possession Was for Purpose of Sale. — See State v. Jenkins, 234 N.C. 112, 66 S.E.2d 819 (1951).

Evidence of Possession. — In a prosecution for illegal possession of intoxicating liquor for the purpose of sale, testimony concerning beer and wine found at defendant's home was competent as tending to show that defendant's possession of the intoxicating liquor was for the purpose of sale. State v. Harrell, 50 N.C. App.

531, 274 S.E.2d 353 (1981).

The State's evidence was sufficient for the jury in a prosecution of defendant for illegal possession of intoxicating liquor for the purpose of sale where it tended to show that defendant had in his constructive possession more than four liters of liquor with an alcoholic content of greater than 21%. State v. Harrell, 50 N.C. App. 531, 274 S.E.2d 353 (1981).

Evidence Sufficient to Support Adverse Verdict. — See State v. Gordon, 224 N.C. 304, 30 S.E.2d 43 (1944).

Evidence Sufficient to Overrule Nonsuit. — Evidence tending to show that defendant was driving his automobile on a highway, that when officers attempted to stop him he attempted to elude them, threw a carton containing three gallons of nontaxpaid whiskey from the car, and drove in a reckless manner until struck from rear by the officers' car and run off the road, was held sufficient to overrule nonsuit upon each of the charges of illegal possession of whiskey for the purpose of sale and unlawful transportation of same. State v. Merritt, 231 N.C. 59, 55 S.E.2d 804 (1949).

Insufficient Evidence to Direct Verdict. — Evidence establishing defendant's possession of more than a gallon of intoxicating (now spirituous) liquor, without other incriminating evidence, is insufficient to support a directed verdict of guilty of possession of intoxicating liquor for the purpose of sale under this section. State v. Ellis, 210 N.C. 166, 185 S.E. 663 (1936).

There was no fatal variance between a citation charging defendant with "possession of tax-paid whiskey for the purpose of sale that whiskey being intoxicating liquor" and a verdict finding defendant guilty of "possession of intoxicating liquor for the purpose of sale," since the reference in the citation to "tax-paid whiskey" was merely surplusage, and it was obvious that the jury found defendant guilty as charged. State v. Harrell, 50 N.C. App. 531, 274 S.E.2d 353 (1981).

Cited in State v. Reed, 153 N.C. App. 462, 570 S.E.2d 116, 2002 N.C. App. LEXIS 1169 (2002).

§ 18B-305. Other prohibited sales.

(a) Sale to Intoxicated Person. — It shall be unlawful for a permittee or his employee or for an ABC store employee to knowingly sell or give alcoholic beverages to any person who is intoxicated.

(b) Discretion for Seller. — Any person authorized to sell alcoholic beverages under this Chapter may, in his discretion, refuse to sell to anyone. It shall be unlawful for any person to knowingly buy alcoholic beverages for someone who has been refused the right to purchase under this subsection.

(c) Notwithstanding subsection (b) of this section, no permittee may refuse to sell alcoholic beverages to a person solely based on that person's race, religion, color, national origin, sex, or disability. (1937, c. 49, ss. 11, 15; c. 411; 1971, c. 872, s. 1; 1977, 2nd Sess., c. 1138, s. 5; 1981, c. 412, s. 2; 1999-462, s. 5.)

Cross References. — As to compensation for injury caused by sales to underage persons, see G.S. 18B-120 et seq.

CASE NOTES

Editor's Note. — *Some of the cases below were decided under similar provisions of former Chapter 18A.*

Purpose of This Section. — The general purpose of G.S. 18A-34 (now G.S. 18B-305(a)) is "(1) the protection of the customer from adverse consequences of intoxication and (2) the protection of the community at large from the injurious consequences of contact with an intoxicated person." Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914, modified on other grounds, 332 N.C. 299, 420 S.E.2d 174 (1992).

Other than as authorized by a legally issued permit, there is no right to sell beer, wine, and other alcoholic beverages in North Carolina. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974), (decided under similar provisions of former Chapter 18A).

A violation of this section constitutes negligence per se. However, the nature of the alleged negligence of the defendant does not alter the effect of plaintiff's contributory negligence. Brower v. Robert Chappell & Associates, 74 N.C. App. 317, 328 S.E.2d 45, cert. denied, 314 N.C. 537, 335 S.E.2d 313 (1985).

Violation of this section constitutes negligence per se. Clark v. Inn W., 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324

N.C. 415, 379 S.E.2d 23 (1989).

Proof Needed for Violation of This Section. — For purposes of imposing civil liability, before a violation of this statute may be found, the plaintiff must allege and prove (1) that the patron was intoxicated and (2) that the licensee or permittee knew or should have known that the patron was in an intoxicated condition at the time he or she was served. Harshbarger v. Murphy, 90 N.C. App. 393, 368 S.E.2d 450 (1988).

Liability of Licensee to General Public for Torts of Intoxicated Customers. — See Chastain v. Litton Sys., 694 F.2d 957 (4th Cir. 1982), cert. denied, 462 U.S. 1106, 103 S. Ct. 2454, 77 L. Ed. 2d 1334 (1983).

Contributory Negligence as Defense. — Contributory negligence of plaintiffs' decedent, who was operating his vehicle in an impaired condition in violation of G.S. 20-138.1, was a defense to wrongful death claim under G.S. 28A-18-2 based on defendants' alleged negligence in selling alcohol to an intoxicated person. Clark v. Inn W., 89 N.C. App. 275, 365 S.E.2d 682, rev'd on other grounds, 324 N.C. 415, 379 S.E.2d 23 (1989).

Minimum Evidence Required to Hold Nightclub Liable for Patron's Tort. — In a suit against a nightclub for liability in the death of a motorist in a collision with intoxicated patron, the irreducible minimum of evidence required of the plaintiff was to at least place the intoxicated patron upon the premises of the establishment which he was attempting to hold liable. Harshbarger v. Murphy, 90 N.C. App. 393, 368 S.E.2d 450 (1988).

Cited in Hutchens v. Hankins, 63 N.C. App. 1, 303 S.E.2d 584 (1983).

§ 18B-306. Making wines and malt beverages for private use.

An individual may make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests. Native wines shall be made principally from honey, grapes, or other fruit or grain grown in this State, or from wine kits containing honey, grapes, or other fruit or grain concentrates, and shall have only that alcoholic content produced by natural fermentation. Malt beverages may be made by use of malt beverage kits containing grain extracts or concentrates. Wine kits and malt beverage kits may be sold in this State. No ABC permit is required to make beverages pursuant to this section. (1971, c. 872, s. 1; 1973, c. 1218; 1981, c. 412, s. 2; c. 747, s. 43; 1985, c. 114, s. 6.)

§ 18B-307. Manufacturing offenses.

(a) Offenses. — It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. — Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. — A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony. (1905, c. 498, s. 2; Rev., s. 3533; 1923, c. 1, ss. 4, 6, 26; C.S., ss. 3407, 3411(d), (f), (z); 1937, c. 49, s. 13; 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 984; c. 1235, s. 1; 1969, c. 789; 1971, c. 872, s. 1; 1979, c. 699, s. 1; 1981, c. 412, s. 2; c. 747, s. 44; 1997-467, s. 1; 2006-222, s. 2.2; 2006-227, s. 2.)

CASE NOTES

Editor's Note. — *Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Possession, within the meaning of this section, may be either actual or constructive. State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

If the property was within the power of the defendant in such a sense that he could and did command its use, the possession was as complete within the meaning of this section as if his possession had been actual. State v. Webb, 233 N.C. 382, 64 S.E.2d 268 (1951); State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

Possession of Property Not Identical to Attempt. — An indictment charging the defendant with possession of property designed for the manufacture of intoxicating liquor is not identical with a charge or an attempt to commit a crime. State v. Jaynes, 198 N.C. 728, 153 S.E. 410 (1930).

Process of Manufacturing Need Not Be Complete. — See State v. Horner, 174 N.C. 788, 94 S.E. 291 (1917).

Accessories Equally Guilty. — A defendant guilty of aiding and abetting the unlawful manufacture of liquor is equally guilty with those who actually operated the still. State v. Clark, 183 N.C. 733, 110 S.E. 641 (1922).

The defendant, convicted on his trial of aiding or abetting in the manufacture of whiskey on one count of the indictment, could not complain because he was tried on another count of the same bill for the unlawful manufacture of liquor and acquitted, there being sufficient evidence to sustain a conviction on each one. State v. Smith, 183 N.C. 725, 110 S.E. 654 (1922).

Arrest Without Warrant. — An alcoholic beverage control officer who saw defendant at the still unlawfully engaged in the manufacture of whiskey had a lawful right to arrest defendant there without a warrant. State v. Taft, 256 N.C. 441, 124 S.E.2d 169 (1962).

It was proper to reject evidence as to the quantity of cotton or corn defendant, tried for unlawful manufacture of liquor, etc., had raised on his farm that year. State v. Smith, 183 N.C. 725, 110 S.E. 654 (1922).

A plea of not guilty under this section puts in issue every element of the offense charged. State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

Insufficiency of Charge Not Such as to Warrant Sustaining Motion in Arrest of Judgment. — See State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

Evidence of the defendant's guilt of possessing parts of a still intended for the purpose of manufacturing alcoholic beverages was sufficient to be submitted to the jury and to sustain their verdict of guilty, and the fact that the parts had not been assembled into a distillery is immaterial under the language of the statute. State v. Jaynes, 198 N.C. 728, 153 S.E. 410 (1930).

When Question for Jury. — Where there was evidence of defendant's guilty knowledge in aiding in the distilling or manufacturing of alcoholic beverages by hauling it away, and also evidence consistent with his innocence in merely hauling away the remnants after the illegal purpose had been accomplished or frustrated, without intention of taking part or aiding in its manufacture, the question of his guilt or innocence was one for the jury, under proper instructions. State v. Horner, 174 N.C. 788, 94 S.E. 291 (1917).

§ 18B-308. Sale and consumption at bingo games.

It shall be unlawful to sell or consume, or for the owner or other person in charge of the premises to allow the sale or consumption of, any alcoholic beverage in any room while a raffle or bingo game is being conducted in that room under Part 2 of Article 37 of Chapter 14 of the General Statutes. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; 1983, c. 896, s. 4.)

Editor's Note. — Session Laws 1983, c. 896, which amended this section, provided in s. 5.1: "Should the Supreme Court of North Carolina or a federal court having jurisdiction over North Carolina find and determine in any manner, whether on the merits or by denial of petition for discretionary review, that the General Assembly may not constitutionally allow 'exempt organizations' as defined herein to conduct bingo or raffles, while denying that privilege to all other persons, then this act and G.S. 14-292.1 are repealed in their entirety, and no person may conduct bingo or raffles under any circumstances not permitted by the gambling laws of North Carolina."

§ 18B-309. Alcoholic beverage sales in Urban Redevelopment Areas.

(a) A food business as defined in G.S. 18B-1000(3), a retail business as defined in G.S. 18B-1000(7), or an eating establishment as defined in G.S. 18B-1000(2) that holds an ABC permit under this Chapter and is located in a part of a city that has been designated as an Urban Redevelopment Area under Article 22 of Chapter 160A of the General Statutes shall not have alcoholic beverage sales in excess of fifty percent (50%) of the business's total annual sales. The city council, or its designee, shall file a certified copy of the official action and original documents, including a map or similar information, designating the area as an Urban Redevelopment Area. The Commission shall make this information available to any permittee who makes a request for this information to the Commission.

(b) Upon request of a city, the Commission shall investigate the total annual alcohol sales and total sales of a business as defined in this section. The Commission shall report the results of such an investigation to the city council, and the report shall contain only the percentage of annual alcohol sales in proportion to the business's total annual sales. A city may request an investigation of a particular business by the Commission only once in each calendar year. These audits may be conducted by the Commission only upon the request of the city council.

(c) Businesses covered by this section shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

(1) Amounts expended by the business for the purchase of alcoholic beverages and the quantity of alcoholic beverages purchased;
(2) Amounts collected from the sale of alcoholic beverages sold; and
(3) Amounts collected from the sale of food, nonalcoholic beverages, and all other items sold by the business.

Records of purchases of alcoholic beverages and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises, and all records related to alcoholic beverages, including original invoices, shall be maintained on the premises for three years and shall be open for inspection and audit pursuant to G.S. 18B-502. (1999-322, s. 1; 2001-515, s. 3(a).)

§§ 18B-310 through 18B-399: Reserved for future codification purposes.

Article 4.

Transportation.

§ 18B-400. Amounts that may be transported.

A person may transport at one time the same amount of alcoholic beverages that he is allowed to buy under G.S. 18B-303(a). Greater amounts of fortified wine, unfortified wine and spirituous liquor may be transported with a purchase-transportation permit under G.S. 18B-403. The Commission may also authorize a distillery representative, in the course of his business, to transport and possess up to 10 gallons of spirituous liquor. (1923, c. 1, s. 25;

C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; 1985, c. 757, s. 163.)

CASE NOTES

Where Transporter Accompanied by Others. — The driver of an automobile is not permitted to carry or convey more than the lawful amount of alcoholic beverages in his automobile even though he is accompanied by others. State v. Welch, 232 N.C. 77, 59 S.E.2d 199 (1950) (decided under similar provisions of former Chapter 18).

§ 18B-401. Manner of transportation.

(a) Opened Containers. — It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine. Violation of this subsection shall constitute a Class 3 misdemeanor.

(b) Taxis. — It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. — The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area. (1923, c. 1, s. 25; C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; c. 747, s. 45; 1983, c. 435, s. 7; 1989, c. 553, s. 3; 1993, c. 508, s. 4; c. 539, s. 312; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Editor's Note. — *Some of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Constitutionality of Former § 18A-26. — There exists a "reasonable basis" for distinguishing transportation of alcoholic beverages in a for-hire passenger vehicle from other modes of transportation. Former G.S. 18A-26 was not unconstitutional on its face or as applied to defendants. State v. Terry, 30 N.C. App. 372, 226 S.E.2d 846 (1976).

Guilty Knowledge. — This section must be interpreted in the light of the common-law principle that guilty knowledge is an essential element of crime, and therefore a person cannot be held guilty of illegally transporting intoxicating liquors if he has no knowledge of the nature of the goods transported. State v. Welch, 232 N.C. 77, 59 S.E.2d 199 (1950).

Subsection (a) only forbids consumption. — It is the consumption of malt beverage in the passenger area of a vehicle while driving it that subsection (a) of this statute forbids, not possession or transportation. State v. Poczontek, 90 N.C. App. 455, 368 S.E.2d 659 (1988).

Evidence held insufficient to fix defendant with ownership or possession of li-

quor found in baggage compartment of bus. State v. Love, 236 N.C. 344, 72 S.E.2d 737 (1952).

Cited in State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221 (1983); State v. Warren, 84 N.C. App. 235, 352 S.E.2d 276 (1987).

§ 18B-402. Alcoholic beverages purchased out-of-State.

A person may bring into North Carolina alcoholic beverages purchased legally outside the jurisdiction of this State in the same amounts that may be legally transported within the State under G.S. 18B-400 or G.S. 18B-403, except that no more than four liters of spirituous liquor purchased outside this State may be brought into this State. (1923, c. 1, s. 25; C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 5.)

§ 18B-403. Purchase-transportation permit.

(a) Amounts. — With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;
(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two combined; or
(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage permittee.

(b) Issuance of Permit. — A purchase-transportation permit may be issued by:

(1) The local board chairman;
(2) A member of the local board;
(3) The general manager or supervisor of the local board; or
(4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board chairman.

(c) Disqualifications. — A purchase-transportation permit shall not be issued to a person who:

(1) Is not sufficiently identified or known to the issuer;
(2) Is known or shown to be an alcoholic or bootlegger;
(3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or
(4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

(d) Form. — A purchase-transportation permit shall be issued on a printed form adopted by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(e) Restrictions on Permit. — A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request. A permit for the purchase and transportation of spirituous liquor may be issued only by an authorized agent of the local board for the jurisdiction in which the purchase will be made.

(f) Time. — A purchase-transportation permit is valid only until 9:30 P.M. on the date of purchase, which date shall be stated on the permit.

(g) Special Occasion Purchase-Transportation Permit. — When a person holds a special occasion for which a permit under G.S. 18B-1001(8) or (9) is required, the purchase-transportation permit issued to him may provide for the storage at and transportation to and from the site of the special occasion of unfortified wine, fortified wine, and spirituous liquor for a period of no more than 48 hours before and after the special occasion. The purchase-transportation permit authorizes that person to transport only the amounts of those alcoholic beverages authorized by subsection (a). The Commission may adopt rules to govern issuance of these extended purchase-transportation permits. (1969, c. 617, s. 1; 1971, c. 872, s. 1; 1973, c. 94; c. 819, s. 1; 1975, ss. 1-4; 1977, c. 176, ss. 1, 2, 4; 1979, c. 19, ss. 3, 4; c. 286, s. 1; c. 445, ss. 1, 3; c. 1076, ss. 1, 2, 3; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 6-8; 1983, c. 457, s. 1.)

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

§ 18B-403.1. Purchase-transportation permit for keg or kegs of malt beverages.

(a) Purchase-Transportation. — A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of G.S. 18B-303(b).

(b) Issuance. — A person holding a permit (permittee) pursuant to G.S. 18B-1001(2) shall issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be maintained by the permittee for 90 days. Upon request by any person, the permittee shall maintain the permit for a requested period in excess of 90 days.

(c) Form. — A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. — A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the purchaser and one by the permittee from whom the purchase is made. The purchaser shall display his copy of the permit to any law enforcement officer upon request.

(e) Violation. — The first violation of this section by a permittee shall result in a warning to the permittee. (2006-253, s. 3.1.)

§ 18B-404. Additional provisions for purchase and transportation by mixed beverage permittees.

(a) Designated Employee. — A mixed beverages permittee may designate an employee to purchase and transport spirituous liquor as authorized by the permittee's permit.

(b) Issuance. — If mixed beverages sales have been approved for an establishment under G.S. 18B-603(d1) or under G.S. 18B-603(e), or for an establishment located in a township in which mixed beverages have been approved the purchase-transportation permit for that establishment may be issued by the local board of any city located in the same county as the establishment, provided the city has approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located. If there is no ABC store within the establishment's jurisdiction, then the mixed beverages permittee shall obtain a mixed beverages purchase-transportation permit from the nearest and most convenient ABC store.

(c) Designated Store. — A local board may designate a store within its system to make sales to mixed beverages permittees.

(d) Size of Bottles. — A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of 355 milliliter or larger containers. A purchase-transportation permit for a mixed beverages permittee who is also a guest room cabinet permittee may authorize the purchase and transportation of containers in sizes approved by the Commission. (1981, c. 412, s. 2; c. 747, ss. 46, 47; 1987, c. 136, s. 3; 1991, c. 459, s. 10; c. 565, ss. 5, 7; 1991 (Reg. Sess., 1992), c. 920, s. 2; 1999-462, s. 4; 2003-218, s. 3.)

Local Modification. — City of Gibsonville: 1989, c. 394, s. 1.

§ 18B-405. Transportation by permittee.

The holder of a permit for the retail sale of malt beverages, unfortified wine, or fortified wine may transport in the course of his business any amount of the alcoholic beverage he is authorized to sell, without a purchase-transportation permit or a commercial transportation permit under G.S. 18B-1115. (1923, c. 1, s. 15; C.S., s. 3411(o); 1939, c. 158, s. 503; 1971, c. 872, s. 1; 1975, c. 411, s. 7; 1977, c. 70, s. 20; c. 176, s. 7; 1979, c. 286, s. 5; 1981, c. 412, s. 2; 1987, c. 136, s. 4.)

§ 18B-406. Unlawful transportation.

It shall be unlawful to transport a greater amount of alcoholic beverage than permitted by this Article, unless the transportation is authorized under Article 11. (1981, c. 412, s. 2.)

§§ 18B-407 through 18B-499: Reserved for future codification purposes.

Article 5.

Law Enforcement.

§ 18B-500. Alcohol law-enforcement agents.

(a) Appointment. — The Secretary of Crime Control and Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve alcohol law-enforcement agents are considered employees of the Division of Alcohol Law Enforcement for workers' compensation purposes while performing duties assigned or approved by the Director of Alcohol Law Enforcement or the Director's designee.

(b) Subject Matter Jurisdiction. — After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense.

The primary responsibility of an agent shall be enforcement of the ABC laws, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor.

(c) Territorial Jurisdiction. — An alcohol law-enforcement agent is a State officer with jurisdiction throughout the State.

(d) Service of Commission Orders. — Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.

(e) Discharge. — Alcohol law-enforcement agents are subject to the discharge provisions of G.S. 18B-202.

(f) Repealed by Session Laws 1995, c. 507, s. 6.2(a). (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, ss. 11, 14; c. 1251, s. 4; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1961, c. 645; 1963, c. 426, ss. 1, 2, 4, 5, 12; 1967, c. 868; 1971, c. 872, s. 1; 1977, c. 70, s. 17; 1981, c. 412, s. 2; 1983, c. 629, s. 1; c. 768, ss. 25.1, 25.2; 1995, c. 466, s. 2; c. 507, s. 6.2(a); 2005-276, ss. 31.1(y), 31.1(z); 2005-344, ss. 10.1(b), 10.1(c); 2006-264, s. 35.)

CASE NOTES

Cited in North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693 (1985); Ford v. State, Dep't of Crime Control & Pub. Safety, 115 N.C. App. 556, 445 S.E.2d 425 (1994).

§ 18B-501. Local ABC officers.

(a) Appointment. — Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. Local ABC enforcement officers shall be designated as "ABC Officers". The local board may designate one officer as the chief ABC officer for that board.

(b) Subject Matter Jurisdiction. — After taking the oath prescribed for a peace officer, a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act).

(c) Territorial Jurisdiction. — A local ABC officer has jurisdiction anywhere in the county in which he is employed except that a city ABC officer's territorial jurisdiction is subject to any limitation included in any local act governing that city ABC system. A local ABC officer may pursue outside his normal territorial jurisdiction anyone who commits an offense within that jurisdiction, as provided in G.S. 15A-402(d).

(d) Assisting Other Local Agencies. — The local ABC officers employed by a local board shall constitute a "law-enforcement agency" for purposes of G.S. 160A-288, and a local board shall have the same authority as a city or county governing body to approve cooperation between law-enforcement agencies under that section.

(e) Assisting State and Federal Enforcement. — A local ABC officer may assist State and federal law-enforcement agencies in the investigation of criminal offenses in North Carolina, under the following conditions:

(1) The local board employing the officer has adopted a resolution approving such assistance and stating the conditions under which it may be provided;

(2) The State or federal agency has made a written request for assistance from that local board, either for a particular investigation or for any investigation that might require assistance within a certain period of time;

(3) The local ABC officer is supervised by someone in the requesting agency; and

(4) As soon as practical after the assistance begins, an acknowledgement of the action is placed in the records of the local board.

A local ABC officer shall have territorial jurisdiction throughout North Carolina while assisting a State or federal agency under this section. While providing that assistance the officer shall continue to be considered an employee of the local board for purposes of salary, worker's compensation, and other benefits, unless a different arrangement is negotiated between the local board and the requesting agency.

(f) Contracts with Other Agencies. — Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement.

(g) Discharge. — Local ABC officers are subject to the discharge provisions of G.S. 18B-202. (1949, c. 1251, s. 4; 1961, c. 645; 1963, c. 426, s. 2; 1967, c. 868; 1971, c. 872, s. 1; 1973, c. 29; 1977, c. 908; 1981, c. 412, s. 2; 1993, c. 193, s. 2; 1995, c. 466, ss. 3, 4.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5; town of Lake Lure: 1979, c. 353, s. 5; 1987, c. 194, s. 5; Greensboro Alcoholic Beverage Control Board: 1985 (Reg. Sess., 1986), c. 886; Craven County Alcoholic Beverage Control Board: 2003-20, s. 1 (as to subsection (f); Mecklenburg County Alcoholic Beverage Board: 1997, c. 224.

CASE NOTES

Editor's Note. *— Many of the cases below were decided under similar provisions of former Chapter 18A.*

Consent to Search. — By seeking liquor licenses, licensees (here permittees) waive their rights under U.S. Const., Amend. IV and consent to administrative searches. Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control, 27 N.C. App. 594, 220 S.E.2d 106 (1975), appeal dismissed, 289 N.C. 296, 222 S.E.2d 696 (1976).

Local law-enforcement officers are not required to request and obtain permission to enter the premises of an alcoholic beverage permittee before entering such premises for the purpose of checking for violations of the alcoholic beverage control laws. Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control, 27 N.C. App. 594, 220 S.E.2d 106 (1975), appeal dismissed, 289 N.C. 296, 222 S.E.2d 696 (1976).

Cited in North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693 (1985); State v. Hair, 114 N.C. App. 464, 442 S.E.2d 163 (1994).

§ 18B-502. Inspection of licensed premises.

(a) Authority. — To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises. Alcohol law-enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of Article 68 of Chapter 143 of the General Statutes.

(b) Interference with Inspection. — Refusal by a permittee or by any employee of a permittee to permit officers to enter the premises to make an inspection authorized by subsection (a) shall be cause for revocation, suspension or other action against the permit of the permittee as provided in G.S. 18B-104. It shall be a Class 2 misdemeanor for any person to resist or obstruct an officer attempting to make a lawful inspection under this section. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, ss. 11, 14; c. 1251, s. 4; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1961, c. 645; 1963, c. 426, ss. 1, 2, 4, 5, 12; 1967, c. 868; 1971, c. 872, s. 1; 1977, c. 70, s. 17; 1981, c. 412, s. 2; 1993, c. 539, s. 313; 1994, Ex. Sess., c. 24, s. 14(c); 1998-212, s. 19.11(f).)

CASE NOTES

Scope of Waiver as to Searches. — Although defendant, as holder of an ABC permit, waived his Fourth Amendment rights as to searches and seizures by officers incident to enforcement of ABC regulations, this waiver did not extend to a warrantless search of items unconnected with the ABC regulatory scheme, such as closed film canisters. State v. Sapatch, 108 N.C. App. 321, 423 S.E.2d 510 (1992).

Cited in Ford v. State, Dep't of Crime Control & Pub. Safety, 115 N.C. App. 556, 445 S.E.2d 425 (1994).

OPINIONS OF ATTORNEY GENERAL

An agent may utilize a narcotics detection dog from another agency during a routine inspection. See opinion of Attorney General to Chief George L. Sweat, 994 N.C.A.G. 3 (July 19, 1994).

Officer may use force to gain entry into property to conduct an inspection if the business manager denies entry. See opinion of Attorney General to Chief George L. Sweat, 994 N.C.A.G. 3 (July 19, 1994).

§ 18B-503. Disposition of seized alcoholic beverages.

(a) Storage. — A law-enforcement officer who seizes alcoholic beverages as evidence of an ABC law violation shall provide for the storage of those alcoholic beverages until the commencement of the trial or administrative hearing relating to the violation, unless some other disposition is authorized under this section.

(b) Disposition Before Trial. — After giving notice to each defendant, to any other known owner, and to the Commission, a judge may order any of the following dispositions of alcoholic beverages seized as evidence of an ABC law violation:

(1) The destruction of any malt beverages except that amount needed for evidence at trial.

(2) The sale of any alcoholic beverages other than malt beverages or nontaxpaid alcoholic beverages, and other than any alcoholic bever-

ages needed for evidence at trial, if the trial is likely to be delayed for more than 90 days, or if the quantity or nature of the alcoholic beverages is such that storage is impractical or unduly expensive.

(3) The destruction of the alcoholic beverages if storage or sale is not practical.

(4) Continued storage of the alcoholic beverages.

(c) Disposition After Trial. — After the criminal charge is resolved, a judge may order the following dispositions of seized alcoholic beverages:

(1) If the owner or possessor of the alcoholic beverages is found guilty of a criminal charge relating to those alcoholic beverages, the judge may order the sale or destruction of any alcoholic beverages that were held until trial.

(2) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the alcoholic beverages returned to that owner or possessor, except as provided in subdivision (3).

(3) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are otherwise resolved in favor of the owner or possessor, but possession of the alcoholic beverages by that owner or possessor would be unlawful, the judge shall order the alcoholic beverages either sold or destroyed.

(4) If ownership of the alcoholic beverages remains uncertain after trial or after the charges have been dismissed, the judge may order the alcoholic beverages held, or the alcoholic beverages sold and the proceeds held, for a specified time, until ownership of the alcoholic beverages can be determined.

(d) Holding for Administrative Hearings. — If alcoholic beverages used as evidence in a criminal proceeding are also needed as evidence at an administrative hearing, a judge shall not order any of the dispositions set out in subsection (c), but shall order the alcoholic beverages held for the administrative hearing and for a determination of final disposition by the Commission. The Commission may, before or after an administrative hearing, order any of the dispositions authorized under subsections (b) and (c). If no related criminal proceeding has commenced, the Commission shall not order sale or destruction of alcoholic beverages until notice has been given to the district attorney for the district where the alcoholic beverages were seized or any violation of ABC laws related to the seizure of the alcoholic beverages is likely to be prosecuted.

(e) Sale Procedure. — The sale of unfortified wine or fortified wine shall be by public auction unless those wines would likely become spoiled or lose value in the time required to arrange a public auction. If spoilage or loss of value is likely, the judge ordering the sale or the Commission may authorize sale at the prevailing wholesale price, as determined by the Commission, to one or more persons holding the appropriate retail wine permits in the county in which the wine was seized, or in a neighboring county if there are no such persons in the county in which the wine was seized. Spirituous liquor may be sold only to the local ABC board serving the city or county in which the liquor was seized, or, if there is no local board for that city or county, to the nearest local board. The sale price shall be at least ten percent (10%) less than the price the local board would pay for the same liquor bought through the State warehouse.

(f) Sale Proceeds. — An agency selling alcoholic beverages seized under the provisions of this Chapter shall keep the proceeds in a separate account until some other disposition is ordered by a judge or the Commission. In a criminal proceeding, if the owner or possessor of the alcoholic beverages is found guilty of a violation relating to seizure of the alcoholic beverages, if the owner or possessor is found not guilty or the charge is dismissed or otherwise resolved in favor of the owner or possessor, but the possession of the alcoholic beverages by that owner or possessor would be unlawful, or if the ownership of the alcoholic beverages cannot be determined, the proceeds from the sale of those alcoholic beverages shall be paid to the school fund of the county in which the alcoholic beverages were seized. If the owner or possessor of alcoholic beverages seized for violation of the ABC laws is found not guilty of criminal charges relating to the seizure of those beverages or the charge is dismissed or otherwise resolved in favor of the owner or possessor, and if possession of the alcoholic beverages by that owner or possessor was lawful when the beverages were seized, the proceeds from the sale of those alcoholic beverages shall be paid to the owner or possessor. The agency making the sale may deduct and retain from the amount to be placed in the county school fund the costs of storing the seized alcoholic beverages and of conducting the sale, but may not deduct those costs from the amount to be turned over to an owner or possessor of the alcoholic beverages.

(g) Court Action by Owner. — Any person who claims any of the following resulting from the seizure of alcoholic beverages may bring an action in the superior court of the county in which the alcoholic beverages were seized:

(1) To be the owner of alcoholic beverages that are wrongfully held.
(2) To be the owner of alcoholic beverages that are needed as evidence in another proceeding.
(3) To be entitled to proceeds from a sale of seized alcoholic beverages.
(4) To be entitled to restitution for alcoholic beverages wrongfully destroyed. (1923, c. 1, s. 12; C.S., s. 3411(l); 1939, c. 12; 1941, c. 310; 1957, c. 1235, s. 3; 1971, c. 872, s. 1; 1981, c. 412, s. 2; 1993, c. 415, s. 5.)

CASE NOTES

Legislative Intent. — The statutes seem to indicate the legislative intent to be that liquor itself, when the subject of unlawful traffic and capable of harmful effects, offends the law and should be regarded as a nuisance and contraband, to be summarily destroyed or otherwise disposed of. Only in case of failure to establish a violation of the law is the restoration of the liquor permitted. However, the processes of the courts are available to anyone legally interested to present his claim for seized liquor, and his plea will be heard. State v. Hall, 224 N.C. 314, 30 S.E.2d 158 (1944) (decided under similar provisions of former Chapter 18).

§ 18B-504. Forfeiture.

(a) Property Subject to Forfeiture. — The following kinds of property shall be subject to forfeiture:

(1) Motor vehicles, boats, airplanes, and all other conveyances used to transport nontaxpaid alcoholic beverages in violation of the ABC laws;
(2) Containers for alcoholic beverages which are manufactured, possessed, sold, or transported in violation of the ABC laws; and
(3) Equipment or ingredients used in the manufacture of alcoholic beverages in violation of the ABC laws.

(b) Exemption for Forfeiture. — Property which may be possessed lawfully shall not be subject to forfeiture when it was used unlawfully by someone other than the owner of the property and the owner did not consent to the unlawful use.

(c) Seizure of Property. — If property subject to forfeiture has not already been seized as part of an arrest or search, a law-enforcement officer may apply to a judge for an order authorizing seizure of that property. An order for seizure may be issued only after criminal process has been issued for an ABC law violation in connection with that property. The order shall describe the property to be seized and shall state the facts establishing probable cause to believe that the property is subject to forfeiture.

(d) Custody until Trial. — A law-enforcement officer seizing property subject to forfeiture shall provide for its safe storage until trial. The officer may destroy stills and perishable materials seized under subdivision (a)(3), if storage is impractical and if the absence of the property will not be likely to adversely affect the defendant's right to defend against the charge that is the basis for the forfeiture. If the officer having custody of the property is satisfied that it will be returned at the time of trial, he may return the property to the owner upon receiving a bond for the value of the property, signed by sufficient sureties. If the property is not returned at the time of trial, the full amount of the bond shall be forfeited to the court. Property which it is unlawful to possess may not be returned to the owner.

(e) Disposition after Trial. — The presiding judge in a criminal proceeding for violation of ABC laws may take the following actions after resolution of a charge against the owner or possessor of property subject to forfeiture under this section:

(1) If the owner or possessor of the property is found guilty of an ABC offense, the judge may order the property forfeited.

(2) If the owner or possessor of the property is found not guilty, or if the charge is dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the property returned to the owner or possessor.

(3) If ownership of the property remains uncertain after trial, the judge may order the property held for a specified time to determine ownership. If the judge finds that ownership cannot be determined with reasonable effort, the judge shall order the property forfeited.

(4) Regardless of the disposition of the charge, if the property is something that may not be possessed lawfully, the judge shall order it forfeited.

(5) If the property is also needed as evidence at an administrative hearing, the judge shall provide that the order does not go into effect until the Commission determines that the property is no longer needed for the administrative proceeding.

(f) Disposition of Forfeited Property. — A judge ordering forfeiture of property may order any one of the following dispositions:

(1) Sale at public auction;

(2) Sale at auction after notice to certain named individuals or groups, if only a limited number of people would have use for that property;

(3) Delivery to a named State or local law-enforcement agency, if the property is not suited for sale, with preference to be given in the following order, to: the agency that seized the property, the ALE Division, the Commission, the local board of the jurisdiction in which the property was seized, and the Department of Justice; or

(4) Destruction, if possession of the property would be unlawful and it could not be used or is not wanted for law enforcement, or if sale or other disposition is not practical.

(g) Proceeds of Sale. — If forfeited property is sold, the proceeds of that sale shall be paid to the school fund of the county in which the property was seized, except as provided in subsection (h). Before placing the proceeds in the school fund the agency making the sale may deduct and retain the costs of storing the property and conducting the sale.

(h) Innocent Parties. — At any time before forfeiture is ordered, an owner of seized property or a holder of a security interest in seized property, other than the defendant, may apply to protect his interest in the property. The application may be made to any judge who has jurisdiction to try the offense with which the property is associated. If the judge finds that the property owner or holder of a security interest did not consent to the unlawful use of the property, and that the property may be possessed lawfully by the owner or holder, the judge may order:

(1) That the property be returned to the owner, if it is not needed as evidence at trial;

(2) That the property be returned to the owner following trial or other resolution of the case; or

(3) That, if the property is sold following trial, a specified sum be paid from the proceeds of that sale to the holder of the security interest.

(i) Defendant Unavailable. — When property is seized for forfeiture, but the owner is unknown, the district attorney may seek forfeiture under this section by an action in rem against the property. If the owner is known and has been charged with an offense, but is unavailable for trial, the district attorney may seek forfeiture either by an action in rem against the property or by motion in the criminal action.

(j) When No Charge is Made. — Any owner of property seized for forfeiture may apply to a judge to have the property returned to him if no criminal charge has been made in connection with that property within a reasonable time after seizure. The judge may not order the return of the property if possession by the owner would be unlawful. (1923, c. 1, s. 6; C.S., s. 3411(f); 1927, c. 18; 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 1235, s. 1; 1969, c. 789; 1971, c. 872, s. 1; 1977, c. 854, s. 2; 1981, c. 412, s. 2; c. 747, s. 48; 1993, c. 415, s. 6.)

Legal Periodicals. — For article discussing forfeiture of property, see 2 N.C.L. Rev. 126 (1924).

For article discussing limits to search and seizure, see 15 N.C.L. Rev. 229 (1937).

For note on search of motor vehicles without warrant, see 30 N.C.L. Rev. 421 (1952).

For note as to requisites for forfeiture of vehicles transporting liquor in violation of law, see 35 N.C.L. Rev. 509 (1957).

CASE NOTES

I. In General.
II. Searches.
III. Arrests.
IV. Seizure and Forfeiture.

I. IN GENERAL.

Editor's Note. *— Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Constitutionality of Former Section. — See State v. Godette, 188 N.C. 497, 125 S.E. 24 (1924).

Legislative Intent. — The plain language of this section indicates the legislature intended judges alone should pass on whether a claimant to an interest in seized property is entitled to relief. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

No Right to Jury. — Alcohol-related forfeitures are now controlled by G.S. 18B-504, which contains no provision explicitly granting a jury trial. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

Purpose of Former Subsection (b). — The predecessor to subsection (b) of this section was designed and intended to protect an owner of a vehicle used illegally within the meaning of the statute who is not the person arrested as "in charge thereof" at the time of the arrest for possession or concealment or illegal transportation. State v. O'Hora, 12 N.C. App. 250, 182 S.E.2d 823 (1971).

This Section Compared with § 90-112.1. — A comparison of G.S. 90-112.1, enacted in 1975, and this section discloses that application of the provisions of this section to drug-related forfeitures is limited in scope, inasmuch as certain provisions in the two statutes cover the same substantive question. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

While reference to this section, pursuant to G.S. 90-112(f), is still necessary in drug-related forfeiture proceedings to determine (i) when forfeiture occurs as to certain drug-related property subject to forfeiture and (ii) when an innocent person must apply for remission of forfeiture, the elements of proof under G.S. 90-112.1(b) are different from those specified in subsection (h) of this section for alcohol-related forfeiture. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

History of Forfeiture Laws — Alcohol

Control. — For a case discussing the history of legislation providing for forfeiture of conveyances used to violate alcohol control laws and the relation of such laws to drug forfeiture statutes, see State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

Cited in In re 1990 Red Cherokee Jeep, 131 N.C. App. 108, 505 S.E.2d 588 (1998).

II. SEARCHES.

No search warrant is required where the owner or person in charge consents to the search. State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961).

As to conduct amounting to voluntary consent to search, see State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961).

Or Where Officer Sees or Has Absolute Personal Knowledge of Presence of Liquor. — No search warrant is required where the officer sees or has absolute personal knowledge that there is liquor in an automobile. State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961).

The constitutional and statutory guarantee against unreasonable search and seizure does not prohibit seizure of evidence and its introduction into evidence on a subsequent prosecution where no search is required. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

When officers saw the liquid in containers generally used to contain and transport nontaxpaid liquor, under the circumstances then existing, they had sufficient reasonable cause to believe that the jars contained nontaxpaid liquor to justify the seizure of the contraband without a search warrant. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

Seizure of contraband does not require a warrant when its presence is fully disclosed without necessity of search. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

When an officer saw nontaxpaid liquor clearly visible in a defendant's car, it became his duty to take possession of the automobile and the liquor found therein and to arrest the defendant. It was his duty to act either with or without the aid of a search warrant. State v. Harper, 235 N.C. 67, 69 S.E.2d 164 (1952).

If an officer saw and had absolute personal knowledge that there was intoxicating liquor in the automobile, it necessarily follows that a defendant's exception based on the court's refusal to suppress the evidence should be overruled. State v. Simmons, 10 N.C. App. 259, 178 S.E.2d 90 (1970), aff'd, 278 N.C. 468, 180 S.E.2d 97 (1971).

When the incriminating article is in plain view of the officers, no search warrant is necessary and the constitutional guaranty does not apply. State v. Simmons, 10 N.C. App. 259, 178 S.E.2d 90 (1970), aff'd, 278 N.C. 468, 180 S.E.2d 97 (1971).

No search warrant was required for the seizure from defendant's car of white plastic jugs containing nontaxpaid whiskey where the jugs were in plain view of the officers from outside the car and no search was necessary for their discovery, and the trial court did not err in the admission of the whiskey and testimony relating to it. State v. Simmons, 10 N.C. App. 259, 178 S.E.2d 90 (1970), aff'd, 278 N.C. 468, 180 S.E.2d 97 (1971).

The defendant, in operating his automobile in excess of 55 miles an hour in a 35 mile zone on the public streets in a city, committed a misdemeanor in the presence of the city police officers, and they had a right to pursue him and arrest him without a warrant. Consequently, after the defendant was taken into custody, it was the duty of the officers to return to defendant's car and to see that it was taken care of and not abandoned. If, upon approaching the automobile, the officers detected the smell of liquor or other alcoholic beverages therein, it was their duty to take possession of the car and seize the liquor without first obtaining a search warrant. State v. Giles, 254 N.C. 499, 119 S.E.2d 394 (1961).

Or Has Reasonable Grounds for Belief. — A search warrant was not necessary to search a suitcase for intoxicating liquor carried by the defendant after arrest, when, under the circumstances, the officer had reasonable grounds for belief that it contained alcoholic beverages. State v. Jenkins, 195 N.C. 747, 143 S.E. 538 (1928).

Automobiles and other conveyances may be searched without a warrant under circumstances that would not justify the search of a house, and a police officer in the exercise of his duties may search an automobile or other conveyance without a search warrant when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile or other conveyance carries contraband materials. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

Search without Warrant. — Officers have no authority to search a car without a warrant, where they do not see or have absolute personal knowledge that there are alcoholic beverages in the car. State v. Godette, 188 N.C. 497, 125 S.E. 24 (1924); State v. Simmons, 192 N.C. 692, 135 S.E. 866 (1926); State v. DeHerrodora, 192 N.C. 749, 136 S.E. 6 (1926).

III. ARRESTS.

Arrest without Warrant. — Where there was evidence that, acting upon information previously received that alcoholic beverages were being unlawfully transported, the proper officers of the law laid in wait for and followed automobile and saw containers and smelled the liquor, they had a right to arrest without warrant and seize the vehicle. State v. Godette, 188 N.C. 497, 125 S.E.2d 24 (1924).

Where an arrest by an officer of the law without a warrant was valid, it could not successfully be maintained that evidence thereof should have been excluded. State v. Godette, 188 N.C. 497, 125 S.E. 24 (1924).

Evidence Required to Hold Passenger. — To hold a mere passenger, under this section, showing that he had knowledge of the presence in the automobile of contraband whiskey is insufficient. The evidence must be sufficient to support an inference of some form of control, joint or otherwise, over the automobile or the liquor. State v. Ferguson, 238 N.C. 656, 78 S.E.2d 911 (1953); State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961).

IV. SEIZURE AND FORFEITURE.

This section does not provide for seizure of all alcoholic beverages found in vehicle, but for seizure of any and all alcoholic beverages found therein being transported contrary to law. State v. Gordon, 225 N.C. 241, 34 S.E.2d 414 (1945).

Confiscation and Forfeiture Are Mandatory. — Where one who was in possession of seized liquor at the time he was arrested for unlawful acts with respect thereto pleads guilty to charges of unlawful possession and unlawful transportation of this liquor and thereupon personal judgment is rendered against him, the provisions of this section are mandatory that the judgment also order the confiscation and forfeiture of the liquor so unlawfully possessed and transported. State v. Hall, 224 N.C. 314, 30 S.E.2d 158 (1944).

Jurisdiction to declare forfeiture of a vehicle used in the transportation of alcoholic beverages is in the court which has jurisdiction of the offense charged against the person operating the vehicle. State v. Reavis, 228 N.C. 18, 44 S.E.2d 354 (1947).

Order Confiscating Car. — Defendant admitted ownership of the car in which two bottles of nontaxpaid whiskey were being transported at the time of his arrest, and he was found guilty of unlawful transportation of alcoholic beverages. This was held sufficient to sustain the court's order confiscating his car and ordering it sold. State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

Order for Forfeiture Nunc Pro Tunc. — Where defendant has been convicted of illegal transportation of nontaxpaid liquor, the court may at a subsequent term enter an order nunc pro tunc for the forfeiture and sale of the vehicle used for such transportation. State v. Maynor, 226 N.C. 645, 39 S.E.2d 833 (1946).

Failure to Notify Lienor of Seizure. — For a case relating to tort liability of the possessor of an automobile for failure to notify the lienor of a seizure and sale under this section, see Williams v. Aldridge Motors, Inc., 237 N.C. 352, 75 S.E.2d 237 (1953).

Liability of Sheriff for Destruction of Vehicle. — In a case arising prior to this section it was held that, where the sheriff took an automobile in custody, under a corresponding statute, and while he was holding it in a storage garage according to law it was destroyed by fire through no fault of his, he was not liable on his forthcoming bond. T. & H. Motor Co. v. Sands, 186 N.C. 732, 120 S.E. 459 (1923).

Where a vehicle is seized by a municipal police officer for illegal transportation of alcoholic beverages, the vehicle is in the custody of the officer or of the law and not the municipality. State v. Law, 227 N.C. 103, 40 S.E.2d 699 (1946).

§ 18B-505. Restitution.

When a person is convicted of a violation of the ABC laws, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing alcoholic beverages from him or his agent as part of an investigation leading to his conviction. (1981, c. 412, s. 2.)

§§ 18B-506 through 18B-599: Reserved for future codification purposes.

Article 6.

Elections.

§ 18B-600. Places eligible to hold alcoholic beverage elections.

(a) Kinds of Elections. — The following kinds of alcoholic beverage elections shall be permitted:

(1) Malt beverage;
(2) Unfortified wine;
(3) ABC store; and
(4) Mixed beverage.

(b) County Elections. — Any county may hold a malt beverage, unfortified wine, or ABC store election. A county may hold a mixed beverage election only if the county already operates at least one county ABC store or a county election on ABC stores is to be held at the same time as the mixed beverage election.

(c) City Malt Beverage and Unfortified Wine Elections. — A city may hold a malt beverage or unfortified wine election only if the county in which the city is located has already held such an election, the vote in the last county election was against the sale of that kind of alcoholic beverage, and:

(1) The city has a population of 500 or more; or
(2) The city operates an ABC store.

(d) City ABC Store Elections. — A city may hold an ABC store election only if:

(1) The city has at least 500 registered voters; and
(2) The county in which the city is located does not operate ABC stores.

(e) City Mixed Beverage Elections. — A city may hold a mixed beverage election only if:

(1) The city has at least 500 registered voters; and
(2) Either:
  a. The city already operates a city ABC store; or
  b. A city ABC store election is to be held at the same time as the mixed beverage election; or
  c. The city does not operate a city ABC store but:
    1. The county operates an ABC store;
    2. The county has already held a mixed beverage election; and
    3. The vote in the last county election was against the sale of mixed beverages.

(e1) Small City Mixed Beverage Elections. — A city may also hold a mixed beverage election if the city has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the smaller city may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

This subsection shall not apply to Alamance, Avery, Burke, Caldwell, Carteret, Cleveland, Henderson, Onslow, Polk, Robeson, Rowan, Rutherford, and Wilkes Counties.

(e2) Ski Resorts ABC Elections. — Notwithstanding any other provisions of this section, any city that provides governmental services to as many as 1,000 snow skiers weekly during the normal ski season from December 1 through March 15, may hold an election authorized by subdivision (a)(1), (2), or (4) of this section. If the sale of mixed beverages is approved, purchase-transportation permits shall be issued and the sales of liquor shall be made by any local board designated by the State ABC Commission.

(e3) Small Town Mixed Beverage Elections. — A town may hold a mixed beverage election if the town has at least 200 registered voters and is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages and that county has only one city that has approved the sale of mixed beverages. Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(e4) Multicounty/City ABC Elections. — If a city is located in two or more counties, the following provisions shall apply:

(1) The city may hold a malt beverage or unfortified wine election if any county in which a portion of the city is located has already held such an election, the vote in the last election of the particular type was against the sale of that type of alcoholic beverage, and the city has a population of 500 or more.

(2) The city may hold a mixed beverage election if the city has at least 500 registered voters and a county in which a portion of the city is located operates ABC stores, or a municipality in either county in which the city is located operates an ABC store.

(3) If an election is held by a city under this subsection, all of the city voters may vote in the election. If the vote is for approval, alcoholic beverages may be sold on the basis of that approval and under the provisions of this Chapter. If the sale of mixed beverages is approved, the mixed beverage permittees shall purchase their liquor from one or more ABC stores located within the city that have been designated by the local boards for those purchases. The remaining gross receipts shall be distributed in accordance with existing law applicable to those ABC stores, except that after the applicable distributions have been made pursuant to G.S. 18B-805(b), (c), and (d), the local share of the mixed beverages surcharge and the guest room cabinet surcharge required by G.S. 18B-804(b)(8) and (9) shall be distributed one-half to the general fund of the city where the mixed beverage permittees are located and one-half to the local ABC boards from whose stores liquor is purchased.

(e5) Small Resort Town ABC Elections. — A town may hold a mixed beverage election if it:

(1) Was incorporated after 1990 and prior to the effective date of this subsection;

(2) Has at least 100 residents;

(3) Is located in a county that borders another state and that has two other municipalities which have ABC stores; and

(4) At the time of the election, has corporate boundaries that border or include land in three counties.

Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(f) Township Elections. — An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

(3) Repealed by Session Laws 2004-203, s. 24, effective August 17, 2004. An election may be called on any of the propositions listed in G.S. 18B-602(a), (d), and (h) in any township located within a county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than twenty percent (20%) of the total county population as of the most recent federal census. In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B-602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

For purposes of this subsection, the name and boundary of a township is as it is shown on the Redistricting Census 2000 TIGER Files with modifications made by the Legislative Services Office on its computer database as of May 1, 2001.

In any township election held under this subsection, the area within any incorporated municipality is excluded, and no permits may be issued under this subsection in any excluded area.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.

(g) Beautification District Elections. — In a county where ABC stores have been approved by an election and a beautification district has been created after May, 1984, and prior to June 30, 1990, an election authorized by subsection (a) of this section may be called in the beautification district. The election shall be called in accordance with G.S. 18B-601(b), conducted, and the results determined in the same manner as county elections held under this Article. For purposes of this Article, beautification districts holding any election shall be treated on the same basis as counties, and municipalities located within those beautification districts shall be treated on the same basis as cities.

(h) Railroad Passenger Terminus Location Elections. — Notwithstanding any other provision of this section, any city or town that is the passenger terminus of a rail line that carries at least 60,000 passengers annually may hold an election authorized by subdivisions (a)(1) and (a)(2) of this section. Any election held under this subsection shall be for the on-premises sale of malt beverages and the on-premises sale of unfortified wine pursuant to G.S. 18B-602(a)(2) and G.S. 18B-602(d)(2). (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; c. 747, s. 49; 1983, c. 113, s. 1; 1983, c. 457, s. 2; 1985 (Reg. Sess., 1986), c. 919, s. 1; 1987, c. 766; 1989, c. 77; c. 400, s. 6; 1991 (Reg. Sess., 1992), c. 976, s. 1; 1993, c. 193, s. 1; 1995, c. 148, s. 1; 2001-515, s. 4; 2003-218, s. 1; 2004-203, s. 24; 2005-336, s. 1; 2007-386, s. 1.)

Local Modification. — (As to Article 6) Avery and Watauga: 1985, c. 390; (as to Article 6) town of Beech Mountain: 1983, c. 285; 1985, c. 390; town of Seven Devils: 1985, c. 671, s. 1; town of Seven Springs: 1981 (Reg. Sess., 1982), c. 1142.

Editor's Note. — Session Laws 1981, c. 412, which repealed Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9, that all local, public-local, and private acts in conflict with this Article would be repealed except as provided in G.S. 18B-604(b) and (c) and in G.S. 18B-605.

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

Provisions under Former Chapter 18 Construed. — See State v. Cochran, 230 N.C. 523, 53 S.E.2d 663 (1949); Weaver v. Morgan, 232 N.C. 642, 61 S.E.2d 916 (1950); Ferguson v. Riddle, 233 N.C. 54, 62 S.E.2d 525 (1950); Tucker v. State Bd. of Alcoholic Control, 240 N.C. 177, 81 S.E.2d 399 (1954); Green v. Briggs, 243 N.C. 745, 92 S.E.2d 149 (1956).

§ 18B-601. Election procedure.

(a) Generally. — Except as otherwise provided in this section, an alcoholic beverage election shall be conducted in the same manner and under the same rules as a referendum under Chapter 163.

(b) How County Election Called. — A county alcoholic beverage election shall be conducted by the county board of elections. When a county is eligible to hold an election under G.S. 18B-600, the county board of elections shall hold the election upon receiving either:

(1) A written request for an election from the governing body of the county; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the county at the time the petition was initiated.

(c) How City Election Called. — A city alcoholic beverage election shall be conducted by the county board of elections or, in the case of a city authorized under Chapter 163 to conduct its own elections, by the city board of elections. When a city is eligible to hold an election under G.S. 18B-600, the board of elections shall hold the election upon receiving either:

(1) A written request for an election from the city governing body; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the city at the time the petition was initiated.

(d) Form of Request. — A request or petition for a malt beverage election shall state which of the four propositions in G.S. 18B-602(a) are to be voted upon. A request or petition for an unfortified wine election shall state which of the three propositions in G.S. 18B-602(d) are to be voted upon. More than one kind of alcoholic beverage election may be included in a single request or petition.

(e) Petitions. — A petition for an election shall be on a form provided by the appropriate local board of elections and shall contain the signature, name, address and precinct of each voter who signs. A petition shall be considered initiated at the time the form is delivered by the board of elections to the person who requests it. Within 72 hours after the petition is initiated, the board of elections shall certify the number of registered voters in the city or county at the time it was initiated. The petition shall be returned to the board of elections within 90 days of the time it is initiated. Failure to return the petition within that time shall render it void. The board of elections shall determine the sufficiency of the petition within 30 days after it is returned.

(f) Election Date. — The board of elections shall set the date for the alcoholic beverage election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board. No alcoholic beverage election may be held on the Tuesday next after the first Monday in November of an even-numbered year.

(g) Registration. — No separate registration shall be required to vote in an alcoholic beverage election. Registration shall be closed for an alcoholic beverage election in the same manner and under the same schedule as for any other election.

(h) Notice. — The board of elections shall give notice of an alcoholic beverage election and notice of the close of registration in the same manner and under the same schedule as for any other election.

(i) Observers. — The proponents and opponents for an alcoholic beverage election, as determined by the local board of elections, shall have the right to appoint two observers to attend each voting place. The persons authorized to appoint observers shall, three days before the election, submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. The persons appointed as observers shall be registered voters of the precinct for which appointed. The chief judge and judges for the precinct may for good cause reject any appointee and require that another be appointed. Observers shall do no electioneering at the voting place nor in any manner impede the voting process, interfere or communicate with or observe any voter in casting his ballot. Observers shall be permitted in the voting place to make such observation and to take such notes as they may desire. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1985, c. 705, ss. 1, 2.1; 1987, c. 14; 1993 (Reg. Sess., 1994), c. 762, s. 8.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

§ 18B-602. Form of ballots.

(a) Malt Beverage Elections. — Any one or more of the propositions listed below may be placed on the ballot for a malt beverage election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

(1) To permit the "on-premises" and "off-premises" sale of malt beverages.
☐ FOR
☐ AGAINST

(2) To permit the "on-premises" sale only of malt beverages.
☐ FOR
☐ AGAINST

(3) To permit the "off-premises" sale only of malt beverages.
☐ FOR
☐ AGAINST

(4) To permit the "on-premises" sale of malt beverages by Class A hotels, motels, and restaurants only; and to permit "off-premises" sales by other permittees.
☐ FOR
☐ AGAINST

(b) Determining Results of Malt Beverage Election. — The kind of malt beverage sales described in each proposition that receives a majority of votes "FOR" shall be allowed. If propositions (2) and (4) are both on the ballot and (2) receives a majority of votes "FOR," then sales shall be permitted according to that proposition regardless of the vote on (4). If one of the propositions receiving a majority of votes "FOR" is proposition (1), then the kind of sales described in that proposition shall be allowed regardless of the vote on any other proposition at that election.

(c) Subsequent Malt Beverage Elections. — A subsequent election in which a majority votes "AGAINST" malt beverage proposition (1) shall not affect the legality of sales that have previously been approved under proposition (2), (3), or (4). A subsequent election in which a majority votes "AGAINST" malt beverage proposition (2) or (3) shall not affect the legality of sales that have previously been approved under proposition (4).

(d) Unfortified Wine Elections. — Any one or more of the propositions listed below may be placed on the ballot for an unfortified wine election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

(1) To permit the "on-premises" and "off-premises" sale of unfortified wine.
☐ FOR
☐ AGAINST

(2) To permit the "on-premises" sale only of unfortified wine.
☐ FOR
☐ AGAINST

(3) To permit the "off-premises" sale only of unfortified wine.
☐ FOR
☐ AGAINST

(e) Determining Results of Unfortified Wine Election. — The kind of unfortified wine sales described in each proposition that receives a majority of votes "FOR" shall be allowed. If one of the propositions receiving a majority of votes "FOR" is proposition (1), then the kind of sales described in that proposition shall be allowed, regardless of the vote on any other proposition at that election.

(f) Subsequent Unfortified Wine Election. — A subsequent election in which a majority votes "AGAINST" unfortified wine proposition (1) shall not affect the legality of sales previously approved under proposition (2) or (3).

(g) ABC Store Elections. — The ballot for an ABC store election shall state the proposition as follows:

To permit the operation of ABC stores.
☐ FOR
☐ AGAINST

(h) Mixed Beverage Elections. — The ballot for a mixed beverage election shall state the proposition as follows:

To permit the sale of mixed beverages in hotels, restaurants, private clubs, community theatres, and convention centers.
☐ FOR
☐ AGAINST

(1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, c. 33; 1977, c. 149, s. 1; c. 182, s. 2; 1979, c. 140, s. 3; c. 683, s. 13; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 9; 1983, c. 583, s. 6.)

§ 18B-603. Effect of alcoholic beverage elections on issuance of permits.

(a) Malt Beverage Elections. — If a malt beverage election is held under G.S. 18B-602(a) and the sale of malt beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) If on-premises sales are approved, the Commission may issue on-premises malt beverage permits.

(2) If off-premises sales are approved, the Commission may issue off-premises malt beverage permits.

(3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises malt beverage permits.

(4) If the kinds of sales described in G.S. 18B-602(a)(4) are approved, the Commission may issue on-premises malt beverage permits to restaurants and hotels only and off-premises malt beverage permits to other permittees.

(b) Unfortified Wine Elections. — If an unfortified wine election is held under G.S. 18B-602(d) and the sale of unfortified wine is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) If on-premises sales are approved, the Commission may issue on-premises unfortified wine permits.

(2) If off-premises sales are approved, the Commission may issue off-premises unfortified wine permits.

(3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises unfortified wine permits.

(c) ABC Store Elections. — If an ABC store election is held under G.S. 18B-602(g) and the establishment of ABC stores is approved, each of the following shall be authorized in the jurisdiction that held the election:

(1) The jurisdiction that held the election may establish and operate ABC stores in the manner described in Articles 7 and 8.

(2) The Commission may issue on-premises and off-premises fortified wine and unfortified wine permits to qualified persons and establishments in that jurisdiction, regardless of any unfortified wine election or any local act, except that neither on-premises nor off-premises unfortified wine permits may be issued in a jurisdiction if:
   a. The jurisdiction approved ABC stores before January 1, 1982;
   b. The jurisdiction held an unfortified wine election before January 1, 1982; and
   c. In that unfortified wine election, the jurisdiction did not approve either on-premises or off-premises sales of unfortified wine.

(3) The Commission may issue brown-bagging permits to restaurants, hotels, and community theatres in the county in which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits may not be issued, however, for restaurants, hotels, or community theatres in any jurisdiction in which the sale of mixed beverages has been approved.

(d) Mixed Beverage Elections. — If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) The Commission may issue mixed beverage permits.

(2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.

(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township or incorporated municipality which has voted to permit

the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.

(4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.

(5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

(d1) In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

(d2) If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may issue mixed beverages permits in that county or city. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county.

(e) Mixed Beverages at Airports. — When the sale of mixed beverages has been approved in a city election, the Commission may also issue permits under subsection (d) for qualified establishments outside the city but within the same county, if:

(1) The establishment is on the property of an airport;
(2) The airport is operated by the city or by an airport authority in which the city participates; and
(3) The airport services planes which board at least 150,000 passengers annually.

(f) Permits Not Dependent on Elections. — The Commission may issue the following kinds of permits without approval at an election:

(1) Special occasion permits;
(2) Limited special occasion permits;
(3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
(4) Culinary permits, except as restricted by subdivision (d)(5);
(5) Special one-time permits issued under G.S. 18B-1002;
(6) All permits listed in G.S. 18B-1100;
(7) The permits authorized by G.S. 18B-1001(1), (3), (5), and (10) for tourism ABC establishments;
(8) The permits authorized by G.S. 18B-1001(1), (3), (5), and (10) for tourism resorts;
(9) The permits authorized by G.S. 18B-1001(1), (3), (5), and (10) for historic ABC establishments.

(f1) Reserved for future codification purposes.

(f2) **(See note)** Permits for Special ABC Areas. — The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S.

18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area.

(g) Miscellaneous. — The definitions in G.S. 18B-1000 shall apply to this section.

(h) Permits Based on Existing Permits. — In any county which borders on the Atlantic Ocean and where (i) the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, or in any county adjacent to that county in which an ABC system has been allowed, or (ii) the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least eight cities in the county, the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county.

The Commission may issue the following permits:

(1) On and Off Premises Malt Beverage;
(2) On and Off Premises Unfortified Wine;
(3) On and Off Premises Fortified Wine; or
(4) Mixed Beverages.

The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of mixed beverages pursuant to G.S. 18B-603(d1), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest ABC system store that is located in the county.

The Commission may further issue on-premises malt beverage and on-premises unfortified wine permits to a sports club located in a county bordering on another state that is adjacent to any county in which permits were issued pursuant to this subsection prior to August 1, 1993. The sports clubs must be located in the unincorporated areas of a county, in which the sale of malt beverages and unfortified wine is not permitted, and where there are six or more municipalities in that county where the sale of malt beverages and unfortified wine is permitted. (1947, c. 1084, s. 3; 1969, c. 647, s. 2; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 589; 1981 (Reg. Sess., 1982), c. 1240; 1983, c. 113, s. 2; 1985, c. 689, s. 7; 1987, c. 136, ss. 5, 6; c. 307, s. 2; c. 443, s. 2; 1989, c. 629, s. 2; 1991 (Reg. Sess., 1992), c. 920, ss. 11, 13; 1993, c. 415, ss. 7-9; 1995, c. 466, s. 5; 1999-456, s. 10; 1999-461, s. 2; 1999-462, ss. 3, 6, 7, 9; 2000-140, s. 2; 2004-199, s. 9; 2007-402, s. 1.)

Local Modification. — City of Kannapolis: 2004-92, s. 9 (as to ABC election); Village of Bald Head Island: 1985, c. 156.

Editor's Note. — Session Laws 1987, c. 443, which added subsection (f2), provides in s. 3 that the act shall not include Robeson, Cleveland, Rutherford and Polk Counties.

Session Laws 1989, c. 629, which amended subsection (f2), provided in s. 4, as amended by Session Laws 1999-462, s. 11: "This act shall not include Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, Polk, Davidson, and Davie Counties."

Subdivision (f)(9) was enacted as subdivision (f)(8) by Session Laws 1999-462, s. 3, and redesignated as subdivision (f)(9) at the direction of the Revisor of Statutes.

Subdivisions (h)(i) and (h)(ii), were amended and enacted by Session Laws 1999-462, s. 9, as subdivisions (h)(1) and (h)(2) and were redesignated as subdivisions (h)(i) and (h)(ii), with corresponding stylistic and punctuation changes, at the direction of the Revisor of Statutes.

§ 18B-604. Timing and effect of subsequent elections.

(a) Time Limits. — No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise, alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

(b) Effect of Favorable County Vote on City or Township. — If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city or township at that or any previous or subsequent election, and regardless of any local act making sales unlawful in that city or township, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified [wine] election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city or township within that county shall not affect the legality of those previously authorized sales in the city or township.

(c) Effect of Negative County Vote on City or Township. — If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city or township in which sale is lawful because of a city or township election or a local act.

(d) Effect of City or Township Election on County. — A city or township alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that city or township.

(e) Repealed by Session Laws 2003-218, s. 2, effective June 19, 2003.

(f) When Sales Stop. — When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1993, c. 415, s. 29; 2003-218, s. 2.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9 that all local, public-local, and private acts in conflict with Article 6 of Chapter 18B would be repealed except as provided in subsections (b) and (c) of this section and in G.S. 18B-605.

§ 18B-605. Local act elections.

If a jurisdiction has lawfully voted in favor of ABC stores or in favor of the sale of some kind of alcoholic beverage, and the jurisdiction would not be eligible to hold another election under the conditions set by G.S. 18B-600, then that jurisdiction may continue to hold elections as though qualified under G.S. 18B-600. Except for the authority to hold the election, however, the procedures of this Chapter shall apply to any subsequent election. (1981, c. 412, s. 2; 1983, c. 457, s. 4.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9, that all local, public-local, and private acts in conflict with Article 6 of Chapter 18B would be repealed except as provided in G.S. 18B-604(b) and (c) and in this section.

§§ 18B-606 through 18B-699: Reserved for future codification purposes.

ARTICLE 7.

Local ABC Boards.

§ 18B-700. Appointment and organization of local ABC boards.

(a) Membership. — A local ABC board shall consist of three members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman.

(b) City Boards. — City ABC board members shall be appointed by the city governing body, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(c) County Boards. — County ABC board members shall be appointed by the board of county commissioners, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(d) Qualifications. — The appointing authority shall appoint members of a local board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character.

(e) Vacancy. — A vacancy on a local board shall be filled by the appointing authority for the remainder of the unexpired term. If the chairman's seat becomes vacant, the appointing authority may designate either the new member or an existing member of the local board to complete the chairman's term.

(f) Removal. — A member of a local board may be removed for cause at any time by the appointing authority. Local board members are subject to the removal provisions of G.S. 18B-202.

(g) Salary. — A local board member may be compensated as determined by the appointing authority.

(h) Conflict of Interest. — The provisions of G.S. 18B-201 shall apply to local board members and employees.

(i) Bond. — Each local board member shall be bonded in an amount not less than five thousand dollars ($5,000), secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may exempt from this bond requirement any board member who does not handle board funds, and it may also increase the amount of the bond for any member who does handle board funds.

(j) Limited Liability. — A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

(1) Was not acting within the scope of his official duties;
(2) Was not acting in good faith;
(3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
(4) Derived an improper personal financial benefit from the transaction; or
(5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board. (1981, c. 412, s. 2; c. 747, s. 50; 1981 (Reg. Sess., 1982), c. 1262, s. 10; 1989, c. 800, s. 19.)

Local Modification. — Cumberland: 1981 (Reg. Sess.,1982), c. 1251, s. 1; city of High Point: 2006-90, s. 2 (as to subsection (a)); city of Shelby: 2006-9, s. 2 (as to subsection (a)); town of Kenansville: 2005-13, s. 2 (as to subsection (a)); town of Maxton: 1987, c. 15.

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 8 that all local, public-local, and private acts in conflict with this section would be repealed except as provided in this section.

§ 18B-701. Powers of local ABC boards.

A local board shall have authority to:

(1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
(2) Adopt rules for its ABC system, subject to the approval of the Commission;
(3) Hire and fire employees for the ABC system;
(4) Designate one employee as manager of the ABC system and determine his responsibilities;
(5) Require bonds of employees as provided in the rules of the Commission;
(6) Operate ABC stores as provided in Article 8;
(7) Issue purchase-transportation permits as provided in Article 4;
(8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
(9) Borrow money as provided in G.S. 18B-702;
(10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
(11) Invest surplus funds as provided in G.S. 18B-702;
(12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
(13) Perform any other activity authorized or required by the ABC law. (1937, c. 49, ss. 10, 12; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1334; 1963, c. 1119, s. 2; 1967, c. 1178; 1969, cc. 118, 902; 1971, c. 872, s. 1; 1973, cc. 85, 185; c. 1000, ss. 1, 2; 1977, c. 618; 1979, c. 467, s. 20; c. 617; 1981, c. 412, s. 2.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

Editor's Note. — Session Laws, 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

ABC board has authority to construct buildings in which to carry out its duties. Waters v. Biesecker, 309 N.C. 165, 305 S.E.2d 539 (1983).

The ABC board is not required to construct buildings; it has authority to purchase or lease buildings for use as ABC stores. Waters v. Biesecker, 309 N.C. 165, 305 S.E.2d 539 (1983).

An alcoholic beverage control officer is a "public officer" within the meaning of G.S. 14-223 and is entitled to the protection of that section. State v. Taft, 256 N.C. 441, 124 S.E.2d 169 (1962) (decided under similar provisions of former Chapter 18).

§ 18B-702. Financial operations of local boards.

(a) Generally. — A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Borrowing Money. — A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

(c) Audits. — A local board shall submit to the Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the Commission.

(d) Deposits and Investments. — A local board may deposit moneys at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

(e) Compliance with Commission Rules. — The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds.

(f) Applicability of Criminal Statutes. — The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon. (1937, c. 49, ss. 10, 12; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1335; 1963, c. 1119, s. 2; 1967, c. 1178; 1969, cc. 118, 902; 1971, c. 872, s. 1; 1973, cc. 85, 185; c. 1000, ss. 1, 2; 1977, c. 618; 1979, c. 467, s. 20; c. 617; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 11; 1991, c. 459, s. 2.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

CASE NOTES

Applicability of Criminal Statutes. — As a local alcoholic beverage control board employee, defendant should have been charged with embezzlement under G.S. 14-90; a trial court lacked jurisdiction to hear the case where defendant was charged with violation of G.S. 14-92. State v. Jones, 172 N.C. App. 161, 615 S.E.2d 896, 2005 N.C. App. LEXIS 1438 (2005), cert. denied, stay denied, 360 N.C. 72, 624 S.E.2d 365 (2005), cert. dismissed, 360 N.C. 72, 624 S.E.2d 366 (2005).

§ 18B-703. Merger of local ABC operations.

(a) Conditions for Merger. — Any city governing body or board of county commissioners may merge its ABC system with the system of one or more other cities or counties if:

(1) Stores operated by the systems of those jurisdictions serve the same general area or are in close proximity to each other; and

(2) The merger is approved by the Commission.

(b) Appointment of Board. — Upon merger of ABC systems, the local boards for those systems shall be replaced by one board appointed jointly by the appointing authorities for the previous boards.

(c) Distribution of Profits. — Before merger, the cities or counties involved shall agree upon a formula for distribution of the profits of the new merged ABC system, based as closely as practicable on the distribution previously authorized for the separate systems. This formula for distribution shall be subject to approval by the Commission.

(d) Enforcement. — Local officers hired by the local ABC board for the merged ABC system shall have the same territorial jurisdiction that officers for each of the merged boards would have.

(e) Dissolution. — With the approval of the Commission, the cities or counties that have merged their ABC systems may dissolve the merged operation at any time and resume their prior separate operations.

(f) Other Details Negotiated. — Issues not addressed in this section concerning the merger or dissolution of ABC systems, such as the method of appointment of the merged board, the size of the merged board, or the procedure for dissolution, may be negotiated by the affected cities and counties, subject to the approval of the Commission.

(g) Operation Follows General Law. — Except as otherwise provided in this section, the authority and operation of any local board established under this section shall be the same as for any other local board.

(h) Agreement for Joint Store Operations. — With the approval of the Commission, two or more governing bodies of counties and/or municipalities with ABC systems may enter into a written agreement whereby one or more ABC stores located within the counties and/or municipalities that are parties to the agreement shall be controlled and operated by the local ABC board specified in the agreement, even though said ABC store or stores are located outside the boundaries of the county or municipality of the local ABC board that will be operating the ABC store or stores that are subject to the agreement. The provisions of this section shall be effective as to such agreements insofar as is applicable. Issues not addressed in this section shall be negotiated by the parties, subject to the approval of the Commission. (1981, c. 412, s. 2; c. 747, s. 51; 2001-128, s. 1.)

§§ 18B-704 through 18B-799: Reserved for future codification purposes.

Article 8.

Operation of ABC Stores.

§ 18B-800. Sale of alcoholic beverages in ABC stores.

(a) Spirituous Liquor. — Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.

(b) Fortified Wine. — In addition to spirituous liquor, ABC stores may sell fortified wine. ABC stores may also sell wine products, irrespective of alcohol content by volume, which were classified as fortified wine by the ABC Commission prior to July 7, 2004.

(c) Commission Approval. — No ABC store may sell any alcoholic beverage which has not been approved by the Commission for sale in this State.

(d) Expired. (1981, c. 412, s. 2; 1985, c. 59, s. 1; 1989, c. 800, s. 21; 2004-135, s. 4.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-801. Location, opening, and closing of stores.

(a) Number of Stores. — Each local board shall have the authority and duty to operate one ABC store. Additional stores may be operated with the approval of the Commission.

(b) Location of Stores. — A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely affected; and

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

(b1) Notwithstanding subsection (b) of this section, no local board may establish an ABC store at any location within the corporate limits of a municipality if the governing body of the municipality has passed a resolution objecting to the location of the proposed ABC store and the resolution is based upon information and evidence presented to the governing body of the municipality at a public hearing. If a municipality objects to the location of a proposed ABC store, the local board may request the Commission to approve the proposed ABC store location notwithstanding the objection of the municipality. The Commission shall have final authority to determine if the operation of an ABC store at the contested proposed location is suitable.

Upon notice given to the Commission by an affected municipality, any statutory and administrative time limits allowed for objections to, or public hearings concerning the location of, an ABC store shall be extended by 45 days to allow a municipality sufficient time to conduct a public hearing and submit its objection and resolution to the Commission.

(c) Closing of Stores. — Subject to the provisions of subsection (a), a local board may close, or the Commission may order a local board to close, any store when the local board or the Commission determines that:

(1) The operation of the store is not sufficiently profitable to justify its continuation;
(2) The store is not operated in accordance with the ABC law; or
(3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates.

(d) Insolvent ABC System. — If an ABC system is insolvent, the local board may apply to the Commission for an order to close the system. Upon receipt of an application, or upon its own motion, the Commission shall investigate the system, and if it finds that further operation of the ABC stores will not be profitable, it may order the system closed. If the Commission orders a local system to close, the Commission may:

(1) After consultation with the local board, its creditors, and other interested parties, schedule a phase out of the system's business activities;
(2) Represent the local board in negotiations with creditors and other interested parties;
(3) Require an accounting or auditing of the local system;
(4) Take possession or arrange for the disposition of any liquor for which the local board has not paid;
(5) Apply to the Superior Court to be appointed as receiver for the local board with all powers and duties of a receiver for a corporation under Article 38 of Chapter 1 of the General Statutes, except that the Commission shall not be required to post the bond required by G.S. 1-504; or
(6) Take any other reasonable steps to promote an orderly closing of the system. (1981, c. 412, s. 2; 1987, c. 135; 1989, c. 770, s. 6; 2009-36, s. 1.)

Local Modification. — Brunswick: 1991, c. 372; 1991 (Reg. Sess., 1992), c. 776; 2005-305 (But see 2006-97, s. 1; 2007-159, s. 1); Guilford: 2009-295; town of Navassa: 1993, c. 17, s. 1.

Effect of Amendments. — Session Laws 2009-36, s. 1, effective October 1, 2009, and applicable to ABC store locations announced on or after that date, added subsection (b1).

§ 18B-802. When stores operate.

(a) Time. — No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, between 9:00 P.M. and 9:00 A.M. The local board shall otherwise determine opening and closing hours of its stores.

(b) Days. — No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, on any Sunday, New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day. A local board may otherwise determine the days on which its stores shall be closed. (1981, c. 412, s. 2.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-803. Store management.

(a) Manager. — A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. — Each store manager shall be bonded in an amount not less than five thousand dollars ($5,000), secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board.

(c) Bonding of Other Employees. — A local board may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 12.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-804. Alcoholic beverage pricing.

(a) Uniform Price of Spirituous Liquor. — The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.

(b) Sale Price of Spirituous Liquor. — The sale of spirituous liquor sold at the uniform State price shall consist of the following components:

(1) The distiller's price.
(2) The freight and bailment charges of the State warehouse as determined by the Commission.
(3) A markup for local boards as determined by the Commission.
(4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3).
(5) An additional markup for local boards equal to three and one-half percent (3½%) of the sum of subdivisions (1), (2), and (3).
(6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
(6a) The bailment surcharge.
(6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
(7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five.
(8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities.
(9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities.

(c) Sale Price of Fortified Wine. — The sale price of fortified wine shall include the tax levied by G.S. 105-113.80(b), as well as State and local sales taxes.

(d) Repealed by Session Laws 1985, c. 59, s. 2. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396;

1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 5; 1983, c. 713, ss. 100, 101; 1985, c. 59, s. 2; c. 68, s. 1; c. 114, ss. 7-9; 1991, c. 565, ss. 4, 7; c. 689, ss. 304, 305; 1991 (Reg. Sess., 1992), c. 920, s. 3.)

CASE NOTES

Cited in Waters v. Biesecker, 60 N.C. App. 253, 298 S.E.2d 746 (1983).

§ 18B-805. Distribution of revenue.

(a) Gross Receipts. — As used in this section, "gross receipts" means all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source.

(b) Primary Distribution. — Before making any other distribution, a local board shall first pay the following from its gross receipts:

(1) The board shall pay the expenses, including salaries, of operating the local ABC system.

(2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).

(3) Each month the local board shall pay to the Department of Health and Human Services five percent (5%) of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Health and Human Services shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.

(4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

(c) Other Statutory Distributions. — After making the distributions required by subsection (b), a local board shall make the following quarterly distributions from the remaining gross receipts:

(1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (3 1/2%) markup provided for in G.S. 18B-804(b)(5) and the bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.

(2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). The local board may contract with the ALE Division to provide the law enforcement required by this subdivision. Notwithstanding the provisions of any local act, this provision shall apply to all local boards.

(3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the

board which shall be at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision shall not be applicable to a local board which is subject to a local act setting a different distribution.

(d) Working Capital. — After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash to operate the ABC system. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.

(e) Other Distributions. — After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

(f) Surcharge Profit Shared. — When, pursuant to G.S. 18B-603(d1), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

(g) Quarterly Distributions. — When this section requires a distribution to be made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid to the recipient by the local board within 30 days of the end of that quarter. Adjustments in the amount to be distributed resulting from the closing of the books and from audit shall be made with the next quarterly payment.

(h) Expenditure of Alcoholism Funds. — Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.

(i) Calculation of Statutory Distributions When Liquor Sold at Less Than

Uniform Price. — If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price. (1981, c. 412, s. 2; c. 747, s. 52; 1983, c. 713, ss. 102-104; 1985 (Reg. Sess., 1986), c. 1014, s. 116; 1991, c. 459, s. 3; c. 689, s. 306; 1991 (Reg. Sess., 1992), c. 920, s. 4; 1993, c. 415, s. 27; 1997-443, s. 11A.118(a); 1999-462, s. 8.)

Local Modification. — Lenoir: 2004-61, ss. 1-3; Tyrell: 2009-69; City of Gibsonville: 1989, c. 394, s. 1; town of Wallace: 1987, c. 94.

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 8 that all local, public-local, and private acts in conflict with this section would be repealed except as provided in this section.

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

No Estoppel against Town Council Where It Acted Outside Its Authority. — Where a town's resolution appropriating a certain percentage of its alcoholic beverage control revenue to county school board was outside the authority of the town council, the town council could not be estopped from terminating the unauthorized payments without notice. Watauga County Bd. of Educ. v. Town of Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

Cited in Waters v. Biesecker, 60 N.C. App. 253, 298 S.E.2d 746 (1983); North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693 (1985).

§ 18B-806. Damaged alcoholic beverages.

(a) Owned by Local Board. — All damaged alcoholic beverages owned by a local board shall be destroyed, given to a public or private hospital for medicinal use only, or given to the Commission.

(b) Not Owned by Local Board. — The Commission shall dispose of all damaged alcoholic beverages which are:

(1) Owned by the Commission;
(2) Damaged while in the State warehouse; or
(3) Damaged while in transit between the State warehouse and a local board.

The Commission shall dispose of the alcoholic beverages by giving them to a public or private hospital for medicinal use only, by selling them to a military installation, or by destroying them.

(c) Sale Procedure. — If damaged alcoholic beverages are sold under subsection (b), sale shall be by:

(1) Advertisement for sealed bids;
(2) Negotiated offer, advertisement and upset bids; or
(3) Exchange.

Funds derived from the sale of damaged alcoholic beverages shall be paid to the general fund of the State.

(d) Records. — Local boards and the Commission shall keep detailed records of all disposals of damaged alcoholic beverages, including brand, quantity and disposition. (1981, c. 412, s. 2.)

§ 18B-807. Rules.

The Commission may adopt rules concerning the organization and operation of self-service ABC stores, the size of ABC store signs, the display of alcoholic beverages, solicitation in and around ABC stores, and any other subject relating to the efficient operation of ABC stores. (1981, c. 412, s. 2.)

§ 18B-808. Warning signs regarding dangers of alcohol consumption during pregnancy required; posting.

(a) Each ABC store shall display or cause to be displayed warning signs that meet the requirements of this section on the store's premises to inform the public of the effects of alcohol consumption during pregnancy.

(b) The Commission shall develop the warning signs in accordance with subsection (c) of this section and provide for their distribution and replacements to local ABC boards subject to the requirement of this section. The Commission may charge a reasonable fee, not to exceed twenty-five dollars ($25.00), for each sign, including replacement signs.

(c) The signs required by this section shall:

(1) Be composed of black, capital letters printed on white paper at the minimum weight of one hundred ten pound index. The letters comprising the word "WARNING" shall be highlighted black lettering and shall be larger than all other lettering on the sign.

(2) Contain the message: "WARNING Pregnancy and alcohol do not mix. Drinking alcohol during pregnancy can cause birth defects."

(3) The size of the sign shall be at least eight and one-half inches by 14 inches.

(4) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

(5) Be in both English and Spanish.

(d) A local ABC board shall ensure that each ABC store manager displays the warning sign in an open and prominent place in the store within 30 days of receipt of the sign from the Commission. (2003-339, s. 2.)

§§ 18B-809 through 18B-899: Reserved for future codification purposes.

ARTICLE 9.

Issuance of Permits.

§ 18B-900. Qualifications for permit.

(a) Requirements. — To be eligible to receive and to hold an ABC permit, a person shall:

(1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;

(2) Be a resident of North Carolina unless:

  a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or

  b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or

  c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;

(3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;

(4) Not have been convicted of an alcoholic beverage offense within two years;

(5) Not have been convicted of a misdemeanor controlled substance offense within two years; and

(6) Not have had an alcoholic beverage permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual registration and inspection fee required in G.S. 18B-903(b1).

(7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

(b) Definition of Conviction. — A person has been "convicted" for the purposes of subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo contendere, and judgment has been entered against him. A felony conviction in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would also constitute a felony in North Carolina. A conviction of an alcoholic beverage offense or misdemeanor drug offense in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would constitute an offense in North Carolina, unless the Commission determines that under North Carolina procedure judgment would not have been entered under the same circumstances. Revocation of a permit in another jurisdiction shall disqualify a person if his conduct would be grounds for revocation in North Carolina.

(c) Who Must Qualify; Exceptions. — For an ABC permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a):

(1) The owner of a sole proprietorship;

(2) Each member of a firm, association or general partnership;

(2a) Each general partner in a limited partnership;

(2b) Each manager and any member with a twenty-five percent (25%) or greater interest in a limited liability company;

(3) Each officer, director and owner of twenty-five percent (25%) or more of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business;

(4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;

(5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(d) Manager of Off-Premises Establishment. — Although he need not otherwise meet the requirements of this section, the manager of an establishment operated by a corporation and holding off-premises permits for malt beverages, unfortified wine, or fortified wine shall be at least 19 years old and shall meet the requirements of subdivisions (3), (4), (5) and (6) of subsection (a).

(e) Convention Centers. — With the approval of the Commission, the manager of a convention center may contract with another person to provide food and beverages at conventions and banquets at the convention center, and that person may engage in the activities authorized by the convention center's permit, under conditions set by the Commission. The person with whom the convention center contracts must meet the qualifications of this section. (1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 53, 54; 1981 (Reg. Sess., 1982), c. 1262, ss. 13, 14; 1983, c. 435, ss. 32, 39; 1987, c. 136, ss. 7, 8; 1993, c. 415, s. 10; 1995, c. 466, s. 6; 2004-203, s. 25(a).)

CASE NOTES

Cited in Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682 (1988); State v. Fletcher, 92 N.C. App. 50, 373 S.E.2d 681 (1988).

§ 18B-901. Issuance of permits.

(a) Who Issues. — All ABC permits shall be issued by the Commission. Purchase-transportation permits shall be issued by local boards under G.S. 18B-403.

(b) Notice to Local Government. — Before issuing a retail ABC permit, other than a:

(1) Special occasion permit under G.S. 18B-1001(8);
(2) Limited special occasion permit under G.S. 18B-1001(9);
(3) Temporary permit under G.S. 18B-905; or
(4) Special one-time permit under G.S. 18B-1002

for an establishment, the Commission shall give notice of the permit application to the governing body of the city in which the establishment is located. If the establishment is not inside a city, the Commission shall give notice to the governing body of the county. The Commission shall allow the local governing body 15 days from the time the notice was mailed or delivered to file written objection to the issuance of the permit. To be considered by the Commission, the objection shall state the facts upon which it is based.

(c) Factors in Issuing Permit. — Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which the applicant has applied. To be a suitable place, the local governing body shall return a Zoning and Compliance Form to the Commission on a form provided by the Commission to show the establishment is in compliance with all applicable building and fire codes and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A of the General Statutes and as required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining whether the applicant and the business location are suitable are all of the following:

(1) The reputation, character, and criminal record of the applicant.
(2) The number of places already holding ABC permits within the neighborhood.
(3) Parking facilities and traffic conditions in the neighborhood.
(4) Kinds of businesses already in the neighborhood.
(5) Whether the establishment is located within 50 feet of a church, public school, or any nonpublic school as defined by Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.
(6) Zoning laws.
(7) The recommendations of the local governing body.
(8) Any other evidence that would tend to show whether the applicant would comply with the ABC laws.

(9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood, including evidence admissible under G.S. 150B-29(a) of any of the following:
  a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.
  b. Evidence of illegal drug activity on or about the licensed premises.
  c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises.

(d) Commission's Authority. — The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1993 (Reg. Sess., 1994), c. 749, ss. 1, 2; 2005-392, ss. 2, 3.)

CASE NOTES

ABC Permit Preempts Municipal Zoning Ordinance. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State Alcoholic Beverage Control Commission, was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503, cert. denied, 320 N.C. 631, 360 S.E.2d 91 (1987).

The superior court is without power to order the Commission to issue a permit, but can order the Commission to exercise its discretion in accordance with law. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970) (decided under similar provisions of former Chapter 18A).

OPINIONS OF ATTORNEY GENERAL

Commission May Issue Permits for the Retail Sale of Fortified Wines in Those Counties and Cities Where A.B.C. Stores Are Authorized. — See opinion of Attorney General to Mr. N.H. Person, 41 N.C.A.G. 616 (1971) (decided under similar provisions of former Chapters 18 and 18A).

In Locality Where Election for Off-Premises Sale of Unfortified Wine Only Has Been Held, Retail Sales of Wine Are Restricted to Those Conditions Despite Revision of General Statutes. — See opinion of Attorney General to Mr. Lee P. Phillips, State Board of Alcoholic Control, 41 N.C.A.G. 630 (1971) (decided under similar provisions of former Chapters 18 and 18A).

§ 18B-902. Application for permit; fees.

(a) Form. — An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. Each person required to qualify under G.S. 18B-900(c) shall sign and swear to the application and shall submit a full set of fingerprints with the application.

(b) Investigation. — Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

The Department of Justice may provide a criminal record check to the ALE Division for a person who has applied for a permit through the Commission. The ALE Division shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The ALE Division and the Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(c) False Information. — Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. — An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit — $400.00.
(2) Off-premises malt beverage permit — $400.00.
(3) On-premises unfortified wine permit — $400.00.
(4) Off-premises unfortified wine permit — $400.00.
(5) On-premises fortified wine permit — $400.00.
(6) Off-premises fortified wine permit — $400.00.
(7) Brown-bagging permit — $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit — $400.00.
(9) Limited special occasion permit — $50.00.
(10) Mixed beverages permit — $1,000.
(11) Culinary permit — $200.00.
(12) Unfortified winery permit — $300.00.
(13) Fortified winery permit — $300.00.
(14) Limited winery permit — $300.00.
(15) Brewery permit — $300.00.
(16) Distillery permit — $300.00.
(17) Fuel alcohol permit — $100.00.
(18) Wine importer permit — $300.00.
(19) Wine wholesaler permit — $300.00.
(20) Malt beverage importer permit — $300.00.
(21) Malt beverage wholesaler permit — $300.00.
(22) Bottler permit — $300.00.
(23) Salesman permit — $100.00.
(24) Vendor representative permit — $50.00.
(25) Nonresident malt beverage vendor permit — $100.00.
(26) Nonresident wine vendor permit — $100.00.
(27) Any special one-time permit under G.S. 18B-1002 — $50.00.
(28) Winery special event permit — $200.00.
(29) Mixed beverages catering permit — $200.00.
(30) Guest room cabinet permit — $1,000.
(31) Liquor importer/bottler permit — $500.00.
(32) Cider and vinegar manufacturer permit — $200.00.

(33) Brew on premises permit — $400.00.
(34) Wine producer permit — $300.00.
(35) Wine tasting permit — $100.00.
(36) Repealed by Session Laws 2005-380, s. 1, effective September 8, 2005, and applicable to wine shipper permit applications submitted on or after that date.
(37) Wine shop permit — $100.00.
(38) Winemaking on premises permit — $400.00.
(39) Wine shipper packager permit — $100.00.
(40) Malt beverage special event permit — $200.00.
(41) Malt beverage tasting permit — $100.00.

(e) Repealed by Session Laws 1998-95, s. 29, effective May 1, 1999.

(f) Fee Not Refundable. — The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. — All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund.

(h) Recycling Plan Required. — Each applicant for an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall prepare and submit with the application a plan for the collection and recycling of all recyclable beverage containers of all beverages to be sold at retail on the premises. A permittee who is not able to find a recycler for its beverage containers may apply to the Alcoholic Beverage Control Commission for a one-year stay of the requirement to implement a recycling program in compliance with G.S. 18B-1006.1. The application shall be made in a form specified by the Commission, shall detail the efforts made by the permittee to provide for the collection and recycling of beverage containers, and shall specify the impediments to implementation of a recycling plan. The Commission shall submit all such applications to the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources for review and certification. The Division of Pollution Prevention and Environmental Assistance shall investigate each application and prepare a summary of its investigation and shall submit the summary to the Commission along with a notation indicating certification or denial of the application. A permittee whose application for a stay is certified by the Division of Pollution Prevention and Environmental Assistance shall not be required to comply with the recycling requirement of the alcoholic beverage laws and regulations during the one-year stay period so certified. (1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 55, 56; 1983, c. 713, s. 105; 1989, c. 737, s. 3; c. 800, s. 7; 1991, c. 267, s. 2; c. 565, ss. 2, 7; c. 669, s. 2; c. 689, ss. 307, 308; 1991 (Reg. Sess., 1992), c. 920, s. 5; 1993, c. 415, s. 11; 1993 (Reg. Sess., 1994), c. 745, s. 28; 1995, c. 404, s. 2; c. 466, s. 7; 1997-134, s. 3; 1997-467, s. 2; 1998-95, s. 29; 2001-262, s. 6; 2001-487, s. 49(f); 2002-147, s. 1; 2003-402, s. 1; 2005-350, s. 2(b); 2005-380, s. 1; 2006-222, s. 2.3; 2006-227, s. 3; 2007-402, s. 2(b); 2008-187, s. 6; 2009-105, s. 1; 2009-377, s. 1.)

Editor's Note. — Session Laws 2002-147, s. 15, provides: "If the Private Security Officer Employment Standards Act of 2002 [S. 2238, 107th Cong. (2002)] is enacted by the United States Congress, the State of North Carolina declines to participate in the background check system authorized by that act as a result of the enactment of this act."

Session Laws 2009-377, in the preface, provides that: "Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

"Whereas, North Carolina's wineries have blossomed into a $1,000,000,000 industry in

North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

"Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

"Whereas, North Carolina's craft brewers also are a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

"Whereas, North Carolina's craft brewers also could serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

"Whereas, North Carolina is now being recognized as a highly respected state for specialty malt beverages; and

"Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; and

"Whereas, the North Carolina General Assembly reaffirms its support of State-based alcohol regulation and the three-tier distribution of wine and malt beverages; Now, therefore,"

For a prior provision similar to G.S. 18B-902(h), see S.L. 2007-402, s. 2(d).

Effect of Amendments. — Session Laws 2008-187, s. 6 amended subsection (h) to add the subsection catchline, which was not included in Session Laws 2007-402, s. 2(b).

Session Laws 2009-105, s. 1, effective June 15, 2009, and applicable retroactively to applications for permits and for renewal of permits submitted to the ABC Commission on or after January 1, 2009, added the second through fifth sentences of subsection (h).

Session Laws 2009-377, s. 1, effective October 1, 2009, added subdivisions (d)(40) and (d)(41).

§ 18B-903. Duration of permit; renewal and transfer.

(a) Duration. — Once issued, ABC permits shall be valid for the following periods, unless earlier surrendered, suspended or revoked:

(1) On-premises and off-premises malt beverage, unfortified wine, and fortified wine permits; culinary permits; and all permits listed in G.S. 18B-1100 shall remain valid indefinitely;

(2) Limited special occasion permits shall be valid for 48 hours before and after the occasion for which the permit was issued;

(3) Special one-time permits issued under G.S. 18B-1002 shall be valid for the period stated on the permit;

(4) Temporary permits issued under G.S. 18B-905 shall be valid for 90 days; and

(5) All other ABC permits shall be valid for one year, from May 1 to April 30.

(b) Renewal. — Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each wine shop permit shall be five hundred dollars ($500.00), and the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be seven hundred fifty dollars ($750.00). A renewal fee shall not be refundable.

(b1) Registration. — Each person holding a malt beverage, fortified wine, or unfortified wine permit issued pursuant to G.S. 18B-902(d)(1) through G.S. 18B-902(d)(6) shall register by May 1 of each year on a form provided by the Commission, in order to provide information needed by the State in enforcing this Chapter and to support the costs of that enforcement. The registration required by this subsection shall be accompanied by an annual registration and inspection fee of two hundred dollars ($200.00) for each permit held. The fee shall be paid by May 1 of each year. A registration fee shall not be refundable. Failure to pay the annual registration and inspection fee shall result in revocation of the permit.

(b2) Recycling Plan Required. — Each person holding an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall submit, along with the annual registration or renewal application, either a current plan for the collection and recycling of all recyclable beverage containers of all beverages sold at retail on the premises, or an application for a waiver pursuant to G.S. 18B-902(h).

(c) Change in Ownership. — All permits for an establishment shall automatically expire and shall be surrendered to the Commission if:

(1) Ownership of the establishment changes; or

(2) There is a change in the membership of the firm, association or partnership owning the establishment, involving the acquisition of a twenty-five percent (25%) or greater share in the firm, association or partnership by someone who did not previously own a twenty-five percent (25%) or greater share; or

(3) Twenty-five percent (25%) or more of the stock of the corporate permittee owning the establishment is acquired by someone who did not previously own twenty-five percent (25%) or more of the stock.

(d) Change in Management. — A corporation holding a permit for an establishment for which the manager is required to qualify as an applicant under G.S. 18B-900(c) shall, within 30 days after employing a new manager, submit to the Commission an application for substitution of a manager. The application shall be signed by the new manager, shall be on a form provided by the Commission, and shall be accompanied by a fee of ten dollars ($10.00). The fee shall not be refundable.

(e) Transfer. — An ABC permit may not be transferred from one person to another or from one location to another.

(f) Lost Permits. — The Commission may issue duplicate ABC permits for an establishment when the existing valid permits have been lost or damaged. The request for duplicate permits shall be on a form provided by the Commission, certified by the permittee and the Alcohol Law Enforcement Division, and accompanied by a fee of ten dollars ($10.00).

(g) Name Change. — The Commission may issue new permits to a permittee upon application and payment of a fee of ten dollars ($10.00) for each location when the permittee's name or name of the business is changed. (1971, c. 872, s. 1; 1975, c. 330, s. 1; c. 411, s. 4; 1981, c. 412, s. 2; c. 747, s. 57; 1983, c. 713, s. 106; 1989, c. 800, s. 8; 1991, c. 565, ss. 3, 7; 1991 (Reg. Sess., 1992), c. 920, s. 6; 1998-95, s. 30; 2002-126, s. 29A.13; 2004-203, s. 25(b); 2005-350, s. 2(c); 2007-402, s. 2(c); 2008-187, s. 7; 2009-105, s. 2.)

Editor's Note. — For a prior provision similar to G.S. 18B-902(h), see S.L. 2007-402, s. 2(d).

Effect of Amendments. — Session Laws 2008-187, s. 7 amended subsection (b2) to add the subsection catchline, which was not included in Session Laws 2007-402, s. 2(c).

Session Laws 2009-105, s. 2, effective June 15, 2009, and applicable retroactively to applications for permits and for renewal of permits submitted to the ABC Commission on or after January 1, 2009, inserted "either" and added "or an application for a waiver pursuant to G.S. 18B-902(h)" at the end of subsection (b2).

§ 18B-904. Miscellaneous provisions concerning permits.

(a) Who Receives Permit. — An ABC permit shall authorize the permitted activity only on the premises of the establishment named in the permit. An ABC permit shall be issued to the owner of the business conducted on the premises, or to the management company employed to independently manage and operate the business. The ABC Commission may determine if a management agreement delegates sufficient managerial control and independence to a manager or management company to require an ABC permit to be issued to the manager.

(b) Posting Permit. — Each ABC permit that is held by an establishment shall be posted in a prominent place on the premises.

(c) Business Not Operating. — An ABC permit shall automatically expire and shall be surrendered to the Commission if the person to whom it is issued does not commence the activity authorized by the permit within six months of the date the permit is effective. Before the expiration of the six-month period, the Commission may waive this provision in individual cases for good cause.

(d) Notice of Issuance. — Upon issuing a permit the Commission shall send notice of the issuance, with the name and address of the permittee and the establishment, to:

(1) The Department of Revenue;
(2) The local board, if one exists, for the city or county in which the establishment is located;
(3) The governing body, sheriff, and tax collector of the county in which the establishment is located;
(4) If the establishment is located inside a city, the governing body, chief of police, and tax collector for the city; and
(5) The ALE Division.

(e) Business or Location No Longer Suitable. —

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood.

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred.

(f) Local Government Objections. — The governing body of a city or county may designate an official of the city or county, by name or by position, to make recommendations concerning the suitability of a person or of a location for an ABC permit. The governing body of a city or county shall notify the Commission of an official designated under this subsection. An official designated under this subsection shall be allowed to testify at a contested case hearing in which the suitability of a person or of a location for an ABC permit is an issue without further qualification or authorization.

(g) Nothing in this Chapter shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech, or from requiring any additional fee for licensing as permitted under G.S. 160A-181.1(c). (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 747, s. 58; 1989, c. 800, ss. 9, 10; 1991, c. 459, s. 4; 1993, c. 415, s. 12; 1998-46, s. 6; 1999-322, s. 2; 2001-515, s. 3(b); 2005-392, s. 4.)

§ 18B-905. Temporary permits.

When an application has been received in proper form, with the required application fee, the Commission may issue a temporary permit for any of the activities for which permits are authorized under G.S. 18B-1001 and 18B-1100. A temporary permit may be revoked summarily by the Commission without complying with the provisions of Chapter 150B. Revocation of a temporary permit shall be effective upon service of the notice of revocation upon the permittee or upon the expiration of three working days after the notice of the revocation has been mailed to the permittee at either his residence or the address given for the business in the permit application. No further notice shall be required. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1987, c. 827, s. 1.)

§ 18B-906. Applicability of Administrative Procedure Act.

(a) Act Applies. — An ABC permit is a "license" within the meaning of G.S. 150B-2, and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section.

(b) Exception on Hearing Location. — Hearings on ABC permits shall be held in Ahoskie, Asheville, Bryson City, Charlotte, Elizabeth City, Fayetteville, Franklin, Goldsboro, Greensboro, Greenville, Hickory, Jacksonville, Kinston, New Bern, Raleigh, Statesville, Wilmington, and Winston-Salem. Hearings shall be held within 100 miles, as best can be determined by the Commission, of the county seat of the county in which the licensed business or proposed business is located. The hearing may be held, however, at any place upon agreement of the Commission and all other parties.

(c) Exception on New Evidence. — In making a final decision in a contested case in which an issue is whether to deny an application for an ABC permit because either the applicant or the location for the proposed ABC permit is unsuitable, the Commission may hear evidence of acts that occurred after the date the contested case hearing was held if the evidence is admissible under G.S. 150B-29(a). New evidence heard under this subsection is not grounds for

reversal or remand under G.S. 150B-51(a). (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, ss. 8, 14; 1953, c. 1207, ss. 2-4; 1957, cc. 1048, 1440; 1963, c. 426, ss. 4, 5, 10-12; c. 460, s. 1; 1971, c. 872, s. 1; 1975, c. 825, s. 1; 1977, c. 176, s. 9; 1981, c. 412, s. 2; 1987, c. 827, s. 1; 1993, c. 415, s. 13; 2005-392, s. 5.)

CASE NOTES

Editor's Note. *— Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

Authority of Commission. — Authority to conduct a hearing and determine whether a State retail (or wholesale) beer permit should be revoked is lodged in the Commission. J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

Commission Charged with Duty of Finding Facts. — The agency that hears the witnesses and observes their demeanor as they testify is charged with the duty of finding the facts. J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

Duty of Court. — The duty of the court is to review the evidence and determine whether the Commission had before it any material and substantial evidence sufficient to support its findings. J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

Prerequisites to Suspension or Revocation of Permit. — See C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control, 279 N.C. 140, 181 S.E.2d 448 (1971).

Revocation of Permit Requires Notice and Hearing. — Before a permit may be revoked the permittee is entitled to notice and a hearing before the Commission. J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

Hearing Sufficient to Meet Requirements of Due Process. — A hearing by an examiner for the Commission, of which hearing the permittee is given notice, is represented by counsel, introduces evidence, and cross-examines the adverse witnesses, all witnesses being sworn, with right to object and except to any ruling and argue the matter, is held sufficient to meet the requirements of due process of law. Sinodis v. State Bd. of Alcoholic Control, 258 N.C. 282, 128 S.E.2d 587 (1962).

The failure to furnish a copy of the hearing examiner's proposed findings and recommendations without a request cannot be held violative of due process. Sinodis v. State Bd. of Alcoholic Control, 258 N.C. 282, 128 S.E.2d 587 (1962).

Nature of Proceedings to Suspend Beer Permit. — A proceeding to suspend a beer permit is an administrative proceeding, which does not involve any criminal liability of the holder of such permit. Boyd v. Allen, 246 N.C. 150, 97 S.E.2d 864 (1957).

The Commission's findings are conclusive if supported by material and substantial evidence. Freeman v. State Bd. of Alcoholic Control, 264 N.C. 320, 141 S.E.2d 499 (1965); J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

The findings of the Commission, when made in good faith and supported by evidence, are final. J. Lampros Whsle., Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965); C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control, 279 N.C. 140, 181 S.E.2d 448 (1971).

After a hearing to determine whether the permittee has violated the law or regulations, the findings of the Commission are conclusive if supported by competent, material and substantial evidence. C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control, 279 N.C. 140, 181 S.E.2d 448 (1971).

And Its Decision Cannot Be Reversed by Jury Verdict. — The verdict of the jury in a criminal prosecution does not have the effect of reversing the decision of the Commission. Freeman v. State Bd. of Alcoholic Control, 264 N.C. 320, 141 S.E.2d 499 (1965).

Findings Held to Support Judgment Suspending Permit. — Findings of fact, supported by evidence, that the holders of a beer permit sold whiskey on the premises, and sold beer consumed by the purchaser on the premises after closing hours and at a time when the sale of beer was prohibited by law, supported judgment suspending the permit, notwithstanding the further finding that the holders had no knowledge of the unlawful conduct of the employees. Boyd v. Allen, 246 N.C. 150, 97 S.E.2d 864 (1957).

Findings Held Insufficient to Sustain Order Suspending License. — A finding that a licensee's employee sold wine to an intoxicated person, without a finding that the employee "knowingly" made the sale to an intoxicated person, is insufficient to sustain an order suspending retail beer and wine license. Watkins v. State Bd. of Alcoholic Control, 14 N.C. App. 19, 187 S.E.2d 500 (1972).

Evidence of Age of Person to Whom Lic-

ensee Sold Beer. — Testimony of officers that a person who had bought beer from a licensee declared he was under 18 is incompetent as hearsay, and a certified copy of a birth certificate without testimony of any person having knowledge thereof that it was the record of the purchaser of the beer is incompetent to prove the age of the purchaser, and therefore such evidence is insufficient to sustain a finding that the licensee sold beer to a minor or failed to give his licensed premises proper supervision. Thomas v. State Bd. of Alcoholic Control, 258 N.C. 513, 128 S.E.2d 884 (1963).

The superior court erred in setting aside an order of the Commission suspending a petitioner's retail beer permit where the evidence before the Commission was sufficient to sustain its findings (1) that on a certain date an intoxicated person was permitted to loiter on the licensed premises of the petitioner in violation of the Commission's regulations and (2) that the operator of the petitioner failed to give the premises proper supervision on the above occasion and where there was no evidence that the Commission acted arbitrarily or in excess of lawful authority in suspending the license. State Keg, Inc. v. State Bd. of Alcoholic Control, 277 N.C. 450, 177 S.E.2d 861 (1970).

Judicial Review of Suspension of Permit. — Judicial review of an order of the Commission suspending a retail beer permit is governed by G.S. 150B-43. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Function of Court on Judicial Review. — On appeal to the court for judicial review of the Commission's decision, it is the duty of the court to review the evidence and determine whether the Commission had before it any material and substantial evidence sufficient to support its findings. C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control, 279 N.C. 140, 181 S.E.2d 448 (1971).

Petition for Review of Permit's Denial. — Where application for an ABC permit was initially denied by commission on Dec. 9, 1985, this denial was clearly a commission action on "issuance" of an ABC permit, and, pursuant to the provisions of this section, the ruling on the application became a "contested case" for purposes of the Administrative Procedure Act on Dec. 9, 1985. Therefore, former G.S. 150A-45, which required petitions for review to be filed in Wake County, was applicable, rather than G.S. 150B-45, and the trial court properly dismissed petition for judicial review, which had been filed in Craven County. In re Melkonian, 85 N.C. App. 715, 355 S.E.2d 798, cert. denied, 320 N.C. 793, 361 S.E.2d 78 (1987).

OPINIONS OF ATTORNEY GENERAL

Whether a Hearing Is Required in All Cases Before Revocation of a Permit. — See opinion of Attorney General to Mr. Lee P. Phillips, State Board of Alcoholic Control, 40 N.C.A.G. 10 (1970) (decided under similar provisions of former Chapter 18).

§§ 18B-907 through 18B-999: Reserved for future codification purposes.

ARTICLE 10.

Retail Activity.

§ 18B-1000. Definitions concerning establishments.

The following requirements and definitions shall apply to this Chapter:

(1) Community theatre. — An establishment owned and operated by a bona fide nonprofit organization that is engaged solely in the business of sponsoring or presenting amateur or professional theatrical events to the public. A permit issued for a community theatre is valid only during regularly scheduled theatrical events sponsored by such nonprofit organization.

(1a) Convention center. — An establishment that meets either of the following requirements:

a. A publicly owned or operated establishment that is engaged in the business of sponsoring or hosting conventions and similar large gatherings, including auditoriums, armories, civic centers, convention centers, and coliseums.

b. A privately owned facility located in a city that has a population of at least 200,000 but not more than 250,000 by the 2000 federal census and is located in a county that has previously authorized the issuance of mixed beverage permits by referendum. To qualify as a convention center under this subdivision, the facility shall meet each of the following requirements:
    1. The facility shall be located within an area that has been designated as an Urban Redevelopment Area under Article 22 of Chapter 160A of the General Statutes, and shall be certified by the appropriate local official as being consistent with the city's redevelopment plan for the area in which the facility is located.
    2. The facility shall contain at least 7,500 square feet of floor space that is available for public use and shall be used exclusively for banquets, receptions, meetings, and similar gatherings.
    3. The facility's annual gross receipts from the sale of alcoholic beverages shall be less than fifty percent (50%) of the gross receipts paid to all providers at permitted functions for food, nonalcoholic beverages, alcoholic beverages, service, and facility usage fees (excluding receipts or charges for entertainment and ancillary services not directly related to providing food and beverage service). The person to whom a permit has been issued for a privately owned facility shall be required to maintain copies of all contracts and invoices for items supplied by providers for a period of three years from the date of the event.

A permit issued for a convention center shall be valid only for those parts of the building used for conventions, banquets, receptions, and other events, and only during scheduled activities.

(1b) Cooking school. — An establishment substantially engaged in the business of operating a school in which cooking techniques are taught for a fee.

(2) Eating establishment. — An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes, but that do not qualify under subdivision (6). Eating establishments shall also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drugstores, which have a lunch counter or other section where food is sold to be eaten on the premises.

(3) Food business. — An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises. Food businesses shall include grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and shall also include establishments engaged primarily in selling unfortified or fortified wine or both, for consumption off the premises.

(4) Hotel. — An establishment substantially engaged in the business of furnishing lodging. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant and hotel need not be owned or operated by the same person.

(5) Private club. — An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests. This provision does not,

however, prohibit such an establishment from being open to the general public for raffles and bingo games as required by G.S. 14-309.11(a) and G.S. 14-309.13. Except for bona fide religious organizations, no organization that discriminates in the selection of its membership on the basis of religion shall be eligible to receive any permit issued under this Chapter.

(5a) Residential private club. — A private club that is located in a privately owned, primarily residential and recreational development.

(6) Restaurant. — An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.

(7) Retail business. — An establishment engaged in any retail business, regardless of whether food is sold on the premises.

(8) Sports club. — An establishment that meets either of the following requirements:

a. The establishment is substantially engaged in the business of providing equine boarding, training, and coaching services, and the establishment offers on-site dining, lodging, and meeting facilities and hosts horse trials and other events sanctioned or endorsed by the United States Equestrian Federation, Inc.; or

b. The establishment is substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both.

The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee.

(9) Congressionally chartered veterans organizations. — An establishment that is organized as a federally chartered, nonprofit veterans organization, and is operated solely for patriotic or fraternal purposes.

(10) Wine producer. — A farming establishment of at least five acres committed to the production of grapes, berries, or other fruits for the manufacture of unfortified wine. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 15; 1983, c. 583, s. 1; c. 896, s. 5; 1987, c. 307, s. 1; c. 391, s. 1; 1993, c. 415, ss. 14, 15; 1993 (Reg. Sess., 1994), c. 579, s. 1; 1995, c. 466, s. 8; c. 509, s. 15; 2001-262, s. 7; 2001-487, s. 49(d); 2002-188, s. 1; 2003-135, s. 1; 2009-539, s. 4.)

Editor's Note. — Session Laws 1983, c. 896, s. 5.1, provided:

"Should the Supreme Court of North Carolina or a federal court having jurisdiction over North Carolina find and determine in any manner, whether on the merits or by denial of petition for discretionary review, that the General Assembly may not constitutionally allow 'exempt organizations' as defined herein to conduct bingo or raffles, while denying that privilege to all other persons, then this act and G.S. 14-292.1 are repealed in their entirety, and no person may conduct bingo or raffles under any circumstances not permitted by the gambling laws of North Carolina."

Effect of Amendments. — Session Laws 2009-539, s. 4, effective August 28, 2009, in subdivision (8), divided the former first sentence of the subdivision into the introductory language and subdivision (8)b by adding "that meets either of the following requirements:" at the end of the introductory language and adding "b. The establishment is" at the beginning of subdivision (8)b; and added subdivision (8)a.

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

The right to sell beer and wine has its foundation in a validly issued permit and does not exist as a constitutional or property right. AGL, Inc. v. North Carolina ABC Comm'n, 68 N.C. App. 604, 315 S.E.2d 718 (1984).

Cited in Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503 (1987); Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. — An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres.

   The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7).

(2) Off-Premises Malt Beverage Permit. — An off-premises malt beverage permit authorizes the retail sale of malt beverages in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses.

(3) On-Premises Unfortified Wine Permit. — An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers;
f. Cooking schools;
g. Community theatres;
h. Wineries;
i. Wine producers.

(4) Off-Premises Unfortified Wine Permit. — An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit may be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision.

(5) On-Premises Fortified Wine Permit. — An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theatres;
e. Wineries;
f. Convention centers.

(6) Off-Premises Fortified Wine Permit. — An off-premises fortified wine permit authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for food businesses. The permit may also be

issued for a winery for sale of its own fortified wine. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision.

(7) Brown-Bagging Permit. — A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theatres;
e. Congressionally chartered veterans organizations.

(8) Special Occasion Permit. — A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permittee, to bring fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers.

(9) Limited Special Occasion Permit. — A limited special occasion permit authorizes the permittee to bring fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held.

(10) Mixed Beverages Permit. — A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Convention centers;
e. Community theatres;
f. Nonprofit organizations; and
g. Political organizations.

(11) Culinary Permit. — A culinary permit authorizes a permittee to possess up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, in the kitchen of a business and to use those alcoholic beverages for culinary purposes. The permit may be issued for either of the following:
a. Restaurants;
b. Hotels.
c. Cooking schools.

A culinary permit may also be issued to a catering service to allow the possession of the amount of fortified wine and spirituous liquor stated above at the business location of that service and at the cooking site. The permit shall also authorize the caterer to transport those alcoholic beverages to and from the business location and the cooking site, and use them in cooking.

(12) Mixed Beverages Catering Permit. — A mixed beverages catering permit authorizes a hotel or a restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and to serve the liquor to guests at the event.

(13) Guest Room Cabinet Permit. — A guest room cabinet permit authorizes a hotel having a mixed beverages permit or a private club having a mixed beverages permit and management contracts for the rental of living units to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A permittee shall provide a reasonable number of vending machines, coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

A guest room cabinet permit may be issued for any of the following:
- a. A hotel located in a county subject to G.S. 18B-600(f).
- b. A hotel located in a county that has a population in excess of 150,000 by the last federal census.
- c. A qualifying private club located in a county defined in G.S. 18B-101(13a)b.2.

(14) Brew on Premises Permit. — A permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. The customer must do all of the following:
- a. Select a recipe and kettle.
- b. Weigh out the proper ingredients and add them to the kettle.
- c. Transfer the wort to the fermenter.
- d. Add the yeast.
- e. Place the ingredients in a fermentation room.
- f. Filter, carbonate, and bottle the malt beverage.

A permittee may transfer the ingredients from the fermentation room to the cold room and may assist the customer in all the steps involved in brewing a malt beverage except adding the yeast. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume.

(15) Wine-Tasting Permit. — A wine-tasting permit authorizes wine tastings on a premises holding a retail permit, by the retail permit holder or his employee. A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business. Any person pouring wine at a wine tasting shall be at least 21 years of age.
- a. Representatives of the winery, which produced the wine, the wine producer, a wholesaler, or a wholesaler's employee may assist with the tasting. Assisting with a wine tasting includes:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the wine tasting.

b. When a representative of the winery that produced the wine, the wine producer, a wine wholesaler, or a wine wholesaler's employee assists in a wine tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the wine tasting.
2. A retail permit holder's employee shall not supervise more than three wine-tasting areas.
3. No more than six wines may be tasted at any one tasting area.
4. The wine tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the wine tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of wine, and that the tastings are not used by industry members for unlawful inducements to retail permit holders. Except for purposes of this subsection, the holder of a wine-tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a wine-tasting permit.

(16) Wine Shop Permit. — A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes.

(17) Winemaking on Premises Permit. — A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer and may only be used for home consumption and the personal use of the customer.

(18) Malt Beverage Tasting Permit. — A malt beverage tasting permit authorizes malt beverage tastings on a premises holding a retail permit by the retail permit holder or his employee. A representative of the brewery whose beverages are being featured at the tasting shall be present at the tasting unless the wholesaler or a wholesaler's employee determines that no representative of the brewery needs to be present. A malt beverage tasting consists of the offering of a sample of one or more malt beverage products, in amounts of no more than two ounces for each sample, without charge, to customers of the business. Any persons pouring malt beverage at a malt beverage tasting shall be at least 21 years of age.

a. Representatives of the brewery which produced the malt beverage, a wholesaler, or a wholesaler's employee may assist with the tasting. Assisting with a malt beverage tasting includes:
   1. Pouring samples for customers.
   2. Checking the identification of patrons being served at the malt beverage tasting.

b. When a representative of the brewery that produced the malt beverage, a malt beverage wholesaler, or a malt beverage wholesaler's employee assists in a malt beverage tasting conducted by a retail permit holder:
   1. The retail permit holder shall designate an employee to actively supervise the malt beverage tasting.
   2. A retail permit holder's employee shall not supervise more than three malt beverage tasting areas.
   3. No more than four malt beverages may be tasted at any one tasting area.
   4. The malt beverage tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the malt beverage tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of malt beverages, and that the tastings are not used by industry members for unlawful inducements to retail permit holders. Except for purposes of this subdivision, the holder of a malt beverage tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a malt beverage tasting permit. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c, 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 16, 17, 22; 1983, c. 457, s. 3; c. 583, ss. 2-5; 1985, c. 89, ss. 1-3; c. 596, s. 1; 1987, c. 391, s. 2; c. 434, s. 1; 1989, c. 800, ss. 11, 12; 1991, c. 459, ss. 5, 6; c. 565, ss. 1, 7; c. 669, s. 1; 1991 (Reg. Sess., 1992), c. 920, s. 7; 1993, c. 508, s. 5; 1995, c. 466, s. 10; c. 509, ss. 16-18; 1997-443, s. 16.28; 1997-467, s. 3; 2001-262, s. 1; 2001-487, s. 49(a); 2003-402, s. 5; 2005-350, ss. 1, 2(a); 2006-222, s. 2.1; 2006-227, ss. 1, 9; 2006-264, s. 35.3; 2009-377, s. 2; 2009-539, s. 3.)

Editor's Note. — Session Laws 2005-327, s. 4, provides: "The Commission shall issue a special occasion permit under G.S. 18B-1001(8) to a sports facility occupied by a major league professional sports team with suites available for sale or lease to patrons of the facility to authorize patrons to make available alcoholic beverages in those suites as if the patron were a host of a reception, party or other special occasion. If the patron occupying the suite so desires, alcoholic beverages by self-service may be made available to any person at least 21 years of age possessing a valid ticket to the event authorizing that person to occupy the suite. At no event may the patron make available a quantity of alcoholic beverages in excess of the amount a person is allowed to buy under G.S. 18B-303(a). This section does not authorize any person possessing a valid ticket to an event at the facility to bring alcoholic beverages onto the premises and consume those alcoholic beverages on the premises, or to remove those beverages from the suite."

Session Laws 2009-377, in the preface, provides that: "Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

"Whereas, North Carolina's wineries have blossomed into a $1,000,000,000 industry in North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

"Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

"Whereas, North Carolina's craft brewers also are a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

"Whereas, North Carolina's craft brewers also could serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

"Whereas, North Carolina is now being recognized as a highly respected state for specialty malt beverages; and

"Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; and

"Whereas, the North Carolina General Assembly reaffirms its support of State-based alcohol regulation and the three-tier distribution of wine and malt beverages; Now, therefore,"

Session Laws 2009-381, s. 2, provides: "The Alcoholic Beverage Control Commission shall examine on a continuing basis the record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs, and shall report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report shall be submitted prior to the convening of the 2011 Regular Session of the General Assembly, and shall include the period from July 1, 2009, through December 31, 2010."

Effect of Amendments. — Session Laws 2009-377, s. 2, effective October 1, 2009, added subdivision (18).

Session Laws 2009-539, s. 3, effective August 28, 2009, in subdivision (4), inserted the third, fourth and sixth sentences, and, in the fifth sentence, inserted "or a wine producer" and "during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine."

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

CASE NOTES

Legislative Classification of Establishments Entitled to "Brown-Bagging" Permits Not Unconstitutional. — See Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974) (decided under similar provisions of former Chapter 18A).

§ 18B-1001.1. Authorization of wine shipper permit.

(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine.

(b) A wine shipper permittee that ships to addresses in the State more than 1,000 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell the products of the wine shipper permittee under Article 12 of this Chapter if the wine shipper permittee is contacted by a wholesaler that wishes to sell the products of the wine shipper permittee. This provision shall not be construed to require the wine shipper permittee to appoint the wholesaler that originally contacted the wine shipper permittee. Wine purchased by a resident of the State at the premises of the wine shipper permittee and shipped to an address in the State under G.S. 18B-109(d) shall not be included in calculating the total of 1,000 cases per year.

(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

(1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).

(2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.

(3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.

(4) Submit any other information that the Commission shall require.

All wine shipper and wine shipper packager permittees shipping wines pursuant to this section shall affix a notice in 26-point type or larger to the outside of each package of wine shipped within or to the State in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY". Any delivery of wines to a person under 21 years of age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the common carrier. The common carrier and the wine shipper or wine shipper packager permittee shall be liable only for their independent acts.

(d) A wine shipper permittee shall be subject to jurisdiction of the North Carolina courts by virtue of applying for a wine shipper permit and shall comply with any audit or other compliance requirements of the Commission and the Department of Revenue. (2003-402, s. 2; 2004-203, s. 26(a); 2005-380, s. 2; 2006-227, s. 4.)

§ 18B-1001.2. Additional wine shipping requirements.

(a) A wine shipper permittee shall:

(1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.

(2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.

(b) The Commission may adopt rules to carry out the provisions of this section and other related provisions governing the direct shipping of wine. (2003-402, s. 3; 2006-227, s. 5.)

§ 18B-1001.3. Authorization of wine shipper packager permit.

The holder of a wine shipper packager permit may provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging. (2006-227, s. 6.)

§ 18B-1002. Special one-time permits.

(a) Kinds of Permits. — In addition to the other permits authorized by this Chapter, the Commission may issue permits for the following activities:

(1) A permit may be issued to a person who acquires ownership or possession of alcoholic beverages through bankruptcy, inheritance, foreclosure, judicial sale, or other special occurrence, and who does not already have a permit authorizing the sale of that kind of alcoholic beverage. The permit may authorize the sale or other disposition of the alcoholic beverages in a manner prescribed by the Commission.

(2) A permit may be issued to a nonprofit organization to allow the retail sale of malt beverages, unfortified wine, fortified wine, or mixed beverages, or to allow brown-bagging, at a single fund-raising event of that organization. A permit for this purpose shall not be issued for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that alcoholic beverage is not lawful.

(3) A permit may be issued to a permittee who is going out of business to authorize the sale or other disposition of his alcoholic beverages stock in a manner that would not otherwise be authorized under his permit.

(4) A permit may be issued to a collector of wine or decorative decanters of spirituous liquor authorizing that person to bring into the State, transport, or possess as a collector, a greater amount of those alcoholic beverages than is otherwise authorized by this Chapter, or to sell those alcoholic beverages in a manner prescribed by the Commission.

(5) A permit may be issued to a unit of local government, or to a nonprofit organization or a political organization to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the unit of local government or organization to raise funds. For purposes of this subdivision "nonprofit organization" means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code or is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic, or

veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. For purposes of this subdivision "political organization" means an organization covered by the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization established by or for a person who is a candidate who has filed a notice of candidacy, paid the filing fees or filed the required petition, and been certified as a candidate. The issuance of this permit will also allow the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and the use for culinary purposes of spirituous liquor lawfully purchased for use in mixed beverages.

(b) Intent. — Permits under this section are to be issued only for the limited circumstances listed in subsection (a) of this section and not as substitutes for other permits required by this Chapter.

(c) Conditions of Permit. — A permit issued under this section shall be valid only for the single transaction or the kind of activity specified in the permit and shall be subject to any conditions the Commission may impose as to the time, place and manner of the authorized activity.

(d) Administrative Procedure. — Denial or revocation of a permit under this section shall not entitle the applicant or permittee to a hearing under Chapter 150B. (1977, c. 854, s. 1; 1981, c. 412, s. 2; 1987, c. 434, s. 2; c. 827, s. 1; 1989, c. 130; c. 800, ss. 13, 14; 2001-262, s. 9; 2008-159, s. 1.)

Effect of Amendments. — Session Laws 2008-159, s. 1, effective August 3, 2008, in the first sentence of subdivision (a)(2), inserted "mixed beverages, or" and made a related grammatical change.

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

§ 18B-1003. Responsibilities of permittee.

(a) Premises. — For purposes of this Chapter, a permittee shall be responsible for the entire premises for which the permit is issued. The permittee shall keep the premises clean, well-lighted and orderly.

(b) Employees. — For purposes of this Chapter, a permittee shall be responsible for the actions of all employees of the business for which the permit is issued. Each holder of a salesman's permit shall be responsible for all sales and deliveries made by his helpers.

(c) Certain Employees Prohibited. — A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

(1) Convicted of a felony within three years;
(2) Convicted of a felony more than three years previously and has not had his citizenship restored;
(3) Convicted of an alcoholic beverage offense within two years; or
(4) Convicted of a misdemeanor controlled substances offense within two years; [or]
(5) A past permit holder under Chapter 18B of the General Statutes whose permit had been revoked within the last 18 months and who had been the permit holder at the location where the person would be employed.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection.

(d) Financial Responsibility. — A permittee shall pay all judgments rendered against him under the provisions of Article 1A of this Chapter. When the Commission is informed, under the provisions of G.S. 18B-127 that there is an outstanding unsatisfied judgment against a permittee, the Commission shall suspend all of the permittee's permits. Notice and hearing are not required for a suspension under this subsection, and the suspension shall become effective immediately upon the Commission's receipt of the report. The suspension shall remain in effect until the permittee demonstrates that he has satisfied the judgment by payment in full. Nothing in this section relieves the permittee of the obligation to pay any applicable fees as a precondition of the reinstatement of his permit. (1981, c. 412, s. 2; 1983, c. 435, s. 40; 2006-253, s. 28.)

§ 18B-1004. Hours for sale and consumption.

(a) Hours. — Except as otherwise provided in this section, it shall be unlawful to sell malt beverages, unfortified wine, fortified wine, or mixed beverages between the hours of 2:00 A.M. and 7:00 A.M., or to consume any of those alcoholic beverages between the hours of 2:30 A.M. and 7:00 A.M., in any place that has been issued a permit under G.S. 18B-1001.

(b) Repealed by Session Laws 1991, c. 689, s. 310, effective August 1, 1991.

(c) Sunday Hours. — It shall be unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 12:00 Noon on that day.

(d) Local Option. — A city may adopt an ordinance prohibiting in the city the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 12:00 Noon on Sunday until 7:00 A.M. on the following Monday. A county may adopt an ordinance prohibiting, in the parts of the county outside any city, the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 12:00 Noon on Sunday until 7:00 A.M. on the following Monday. Neither a city nor a county, however, may prohibit those sales in establishments having brown-bagging or mixed beverages permits.

(e) This section does not prohibit at any time the wholesale delivery and sale of unfortified wine, fortified wine, and malt beverages to retailers issued permits pursuant to G.S. 18B-1001 or G.S. 18B-1002(a)(2) or (5). (1943, c. 339, ss. 1-3; 1949, c. 974, s. 12; 1951, c. 997, s. 1; 1953, c. 675, s. 4; 1963, c. 426, ss. 7-9, 12; 1969, c. 1131; 1971, c. 872, s. 1; 1973, cc. 56, 153; 1979, c. 286, s. 3; 1981, c. 412, s. 2; 1987, c. 35; c. 308; 1991, c. 689, s. 310; 1993, c. 243, ss. 1, 2; c. 415, s. 16.)

CASE NOTES

Editor's Note. *— The cases below include cases decided under similar provisions of former Chapter 18A.*

The right to sell has its foundation in the permit and does not exist as a constitutional or property right. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

Operators of establishments without a "brown-bagging" permit who were prohibited by ordinance from selling wine and beer on Sunday were not deprived of a constitutional or property right. Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974).

Applied in Hill v. State Bd. of Alcoholic Control, 17 N.C. App. 592, 195 S.E.2d 94 (1973).

OPINIONS OF ATTORNEY GENERAL

Authority of Counties and Municipalities to Regulate Sale of Beer and Wine on Sundays. — See opinion of Attorney General to Mr. H.L. Riddle, Jr., 41 N.C.A.G. 484 (1971) (decided under similar provisions of former Chapters 18 and 18A).

§ 18B-1005. Conduct on licensed premises.

(a) Certain Conduct. — It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

(1) Any violation of this Chapter;

(2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons; or

(3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts.

(4) through (6) Repealed by Session Laws 2003-382, s. 1, effective August 1, 2003.

(b) Supervision. — It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued. (1943, c. 400, s. 6; 1945, c. 708, s. 6; c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, ss. 13, 15; c. 1251, s. 3; 1957, c. 1048; 1959, c. 745, s. 2; 1963, c. 426, ss. 6, 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 30; c. 1295; c. 1452, s. 4; 1977, c. 176, ss. 1-3; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 18, 19; 2003-382, s. 1.)

Editor's Note. — Session Laws 2003-382, provides in its preamble: "Whereas, the United States District Court for the Middle District of North Carolina has issued a preliminary injunction, in the case of Carandola v. Bason, enjoining the State of North Carolina from enforcing regulations which prohibit certain sexually explicit conduct on premises licensed by the Alcoholic Beverage Control Commission; and

"Whereas, the federal District Court concluded that the regulations are likely to be held to be unconstitutional; and

"Whereas, upon review of the federal District Court decision in Carandola, the United States Circuit Court of Appeals for the Fourth Circuit has found that the federal District Court did not abuse its discretion, and has allowed the injunction to remain in place; and

"Whereas, the Circuit Court of Appeals for the Fourth Circuit has stated that entertainment such as nude or topless dancing at bars and clubs has 'a long history of spawning deleterious effects,' including 'prostitution and the criminal abuse and exploitation of young women'; and

"Whereas, the General Assembly has reviewed studies of the secondary effects of sexually oriented businesses that have been conducted in locations across the United States, including: Phoenix, Arizona; Los Angeles, California; Minneapolis, Minnesota; Austin, Texas; New York City, New York; Oklahoma City, Oklahoma; and other cities; and

"Whereas, studies show that negative secondary effects of sexually oriented businesses include increases in crime, such as prostitution, drug offenses, assaults, and sex crimes; and

"Whereas, it is not the intent of the General Assembly to suppress the conduct of entertainment at premises licensed by the Alcoholic Beverage Control Commission, but it is the desire of the General Assembly to address the harmful secondary effects of such entertainment, including higher crime rates, public sexual conduct, sexual assault, prostitution, and other secondary negative effects; and

"Whereas, it is the intent of the General Assembly to prohibit entertainment at premises licensed by the Alcoholic Beverage Control Commission that provides an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, and the spread of sexually transmitted diseases; Now, therefore."

CASE NOTES

Editor's Note. — *Many of the cases below were decided under similar provisions of former Chapters 18 and 18A.*

The grantee of a privilege license need not surrender his constitutional protections in order to get the state-controlled license. C'est Bon, Inc. v. North Carolina State Bd. of Alcoholic Control, 325 F. Supp. 404 (W.D.N.C. 1971).

On a First Amendment challenge, because the predominant purpose of this section is to address the secondary effects of lewd conduct and not merely to suppress erotic expression, it is content neutral and thus subject only to intermediate scrutiny rather than strict scrutiny. Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 2002 U.S. App. LEXIS 17943 (4th Cir. 2002).

In an overbreadth challenge based on the First Amendment, plaintiffs were likely to prevail at trial because G.S. 18B-1005(a)(5) would apply to much mainstream entertainment such as ballet and other kinds of dance as well as theater and movies with clear artistic merit. Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 2002 U.S. App. LEXIS 17943 (4th Cir. 2002).

The words "permit" and "allow" are synonymous. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

"Permit". — To permit as used in former G.S. 18A-34(a)(4) means to acquiesce with knowledge, to knowingly consent. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

"Permit" has been construed to mean in effect "knowingly permit." To permit sale of alcoholic beverages to a minor connotes some opportunity for knowledge and prevention of the sale. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Knowledge Required. — To permit the unlawful sale of liquor in his building, an owner must have knowledge of the violation and consent to it. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

A finding that a licensee's employee sold wine to an intoxicated person, without a finding that the employee "knowingly" made the sale to an intoxicated person, is insufficient to sustain an order suspending retail beer and wine license. Watkins v. State Bd. of Alcoholic Control, 14 N.C. App. 19, 187 S.E.2d 500 (1972).

"Knowledge". — "Knowledge" means an impression of the mind, the state of being aware; and this may be acquired in numerous ways and from many sources. It is usually obtained from a variety of facts and circumstances. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Generally speaking, when it is said that a person has knowledge of a given condition, it is meant that his relation to it, his association with it, his control over it, and his direction of it are such as give him actual information concerning it. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

The mere fact that two boys violated the law on petitioner's premises on a single night within a period of 35 minutes does not constitute substantial evidence that petitioner knowingly permitted the consumption of alcoholic liquors on his premises. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Knowledge may be implied from the circumstances. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Proprietor Responsible Even If One Carries His Own Beverage. — The proprietor is responsible if he knowingly permits another to drink on his premises, even if he carried his own beverage. Campbell v. North Carolina State Bd. of Alcoholic Control, 263 N.C. 224, 139 S.E.2d 197 (1964), overruled on other grounds, National Food Stores v. Board of Alcoholic Control, 268 N.C. 624, 151 S.E.2d 582 (1966); D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).

Reasonable Effort at Enforcement. — All the evidence adduced at the hearing and considered by the Commission tended to show that the licensee had been making a reasonable effort in good faith to enforce the provisions of this section where licensee's employees were ejecting troublemakers from his premises, thus indicating petitioner's disapproval of the disorderly conduct in which the participants were engaged. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

The failure to observe all activities on a busy parking lot for a period of 35 minutes is not a failure, within the meaning of the law, to give the licensed premises proper supervision. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Arranging Not to See Violations. — The holder of a license for the sale of wine and beer who is aware of violations on his premises but who arranges never to see them cannot be said to be ignorant of their existence. He must take steps to avoid violations or suffer the penalties prescribed. Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

Evidence Sufficient to Find Improper Entertainment. — There was ample, competent, material and substantial evidence to support the factual finding that petitioner did permit improper entertainment, conduct and practices upon the licensed premises by allowing dancing where the dancing girl exposed her pubic area to customers. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Cited in State v. Campbell, 79 N.C. App. 468, 339 S.E.2d 674 (1986); Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914 (1991).

§ 18B-1005.1. Sexually explicit conduct on licensed premises.

(a) It shall be unlawful for a permittee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

(1) Any conduct or entertainment by any person whose genitals are exposed or who is wearing transparent clothing that reveals the genitals;

(2) Any conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes or simulates the penetration, however slight, by any object into the genital or anal opening of a person's body; or

(3) Any conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals.

(b) Supervision. — It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

(c) Exception. — This section does not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. (2003-382, s. 2.)

Editor's Note. — Session Laws 2003-382, provides in its preamble: "Whereas, the United States District Court for the Middle District of North Carolina has issued a preliminary injunction, in the case of Carandola v. Bason, enjoining the State of North Carolina from enforcing regulations which prohibit certain sexually explicit conduct on premises licensed by the Alcoholic Beverage Control Commission; and

"Whereas, the federal District Court concluded that the regulations are likely to be held to be unconstitutional; and

"Whereas, upon review of the federal District Court decision in Carandola, the United States Circuit Court of Appeals for the Fourth Circuit has found that the federal District Court did not abuse its discretion, and has allowed the injunction to remain in place; and

"Whereas, the Circuit Court of Appeals for the Fourth Circuit has stated that entertainment such as nude or topless dancing at bars and clubs has 'a long history of spawning deleterious effects,' including 'prostitution and the criminal abuse and exploitation of young women'; and

"Whereas, the General Assembly has reviewed studies of the secondary effects of sexually oriented businesses that have been conducted in locations across the United States, including: Phoenix, Arizona; Los Angeles, California; Minneapolis, Minnesota; Austin, Texas; New York City, New York; Oklahoma City, Oklahoma; and other cities; and

"Whereas, studies show that negative secondary effects of sexually oriented businesses include increases in crime, such as prostitution, drug offenses, assaults, and sex crimes; and

"Whereas, it is not the intent of the General Assembly to suppress the conduct of entertainment at premises licensed by the Alcoholic Beverage Control Commission, but it is the desire of the General Assembly to address the harmful secondary effects of such entertainment, including higher crime rates, public sexual conduct, sexual assault, prostitution, and other secondary negative effects; and

"Whereas, it is the intent of the General Assembly to prohibit entertainment at premises licensed by the Alcoholic Beverage Control Commission that provides an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, and the spread of sexually transmitted diseases; Now, therefore."

CASE NOTES

Editor's Note. *— Some of the cases below were decided under G.S. 18B-1005 prior to its amendment, and the enactment of G.S. 18B-1005.1, by Session Laws 2003-382, ss. 1 and 2.*

On a First Amendment challenge, because the predominant purpose of this section is to address the secondary effects of lewd conduct and not merely to suppress erotic expression, it is content neutral and thus subject only to intermediate scrutiny rather than strict scrutiny. Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 2002 U.S. App. LEXIS 17943 (4th Cir. 2002).

Statute Not Unconstitutionally Vague on Its Face. — G.S. 18B-1005.1(a)(2) is not unconstitutionally vague on its face because the term "simulate" is sufficiently precise to notify persons of ordinary intelligence of the conduct prohibited by the statute and to prevent the risk of arbitrary or discriminatory enforcement; under G.S. 18B-1005.1(a)(2), an act constitutes simulated sexual intercourse only if it creates a realistic impression of an actual sexual act. Giovani Carandola, Ltd. v. Fox, 470 F.3d 1074, 2006 U.S. App. LEXIS 30838 (4th Cir. 2006).

G.S. 18B-1005.1(a)(3) is not unconstitutionally vague on its face because the word "fondle" was sufficiently clear to prevent the risk of arbitrary enforcement and to put persons of ordinary intelligence on notice that G.S. 18B-1005.1(a)(3) was aimed at preventing overt sexual contact. Giovani Carandola, Ltd. v. Fox, 470 F.3d 1074, 2006 U.S. App. LEXIS 30838 (4th Cir. 2006).

In an overbreadth challenge based on the First Amendment, plaintiffs were likely to prevail at trial because G.S. 18B-1005(a)(5) would apply to much mainstream entertainment such as ballet and other kinds of dance as well as theater and movies with clear artistic merit. Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 2002 U.S. App. LEXIS 17943 (4th Cir. 2002).

Law restricting certain erotic dancing in establishments that had state liquor licenses was unconstitutionally overbroad on its face because it was too burdensome on the expressive elements of erotic dancing since it prohibited erotic movements and gestures regardless of whether a dancer was nude, and it burdened a substantial amount of mainstream musical, theatrical, and dance activity. Giovani Carandola, Ltd. v. Fox, 396 F. Supp. 2d 630, 2005 U.S. Dist. LEXIS 25981 (M.D.N.C. 2005), aff'd in part, 470 F.3d 1074, 2006 U.S. App. LEXIS 30838 (4th Cir. 2006).

G.S. 18B-1005.1(a)(1), (2), and (3) are not facially overbroad because: (1) the statute does not have as its predominant purpose an intent to suppress free expression; (2) under the Alcoholic Beverage Control Commission's interpretation of the statute, G.S. 18B-1005.1 has no prohibitory effect on non-erotic dance and does not apply to other mainstream entertainment; (3) G.S. 18B-1005.1 is readily susceptible to the Commission's construction; (4) G.S. 18B-1005.1(c)'s exception shelters most protected activity; and (5) G.S. 18B-1005.1 does not reach a substantial number of impermissible applications. Giovani Carandola, Ltd. v. Fox, 470 F.3d 1074, 2006 U.S. App. LEXIS 30838 (4th Cir. 2006).

§ 18B-1006. Miscellaneous provisions on permits.

(a) School and College Campuses. — No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 seats, or to any golf courses owned or leased by the institutions and open to the public for use.

(b) Lockers at Clubs. — A private club or congressionally-chartered veterans organization which has been issued a brown-bagging permit may, but is not required to, provide lockers for its members to store their alcoholic beverages. If lockers are provided, however, they shall not be shared but shall be for individual members. Each locker and each bottle of alcoholic beverages on the premises shall be labelled with the name of the member to whom it belongs. No more than eight liters each of malt beverages or unfortified wine may be stored by a member at one time. No more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined, may be stored by a member at one time.

(c) Wine Sales. — Holders of retail or wholesale permits for the sale of unfortified or fortified wine may buy and sell only wines on the Commission's approved list. The Commission may authorize the importation and purchase of wines not on the approved list by permittees and others. An authorization shall state the kind and amount of wine that may be imported and purchased and the time within which the transaction shall be completed.

(d) Unlawful Possession or Consumption. — It shall be unlawful for a permittee to possess or consume, or allow any other person to possess or consume, on the licensed premises, any fortified wine or spirituous liquor, the possession or consumption of which is not authorized either by the permits issued to him for the premises or by any other provision of the ABC law.

(e) Facsimile Permit. — It shall be unlawful for any person to produce or possess any false or facsimile permit, or for a permittee to display any false or facsimile permit on his licensed premises.

(f) Failure to Surrender Permit. — It shall be unlawful for any person to refuse to surrender any permit to the Commission upon lawful demand of the Commission or its agents.

(g) Restrictions on Sales at Cooking Schools. — Retail sales of food or alcoholic beverages to be consumed on the premises of a cooking school are restricted to bona fide enrolled students of that school. Violation of this subsection is a ground for administrative action under G.S. 18B-104.

(h) Purchase Restrictions. — A retail permittee may purchase malt beverages, unfortified wine, or fortified wine only from a wholesaler who maintains a place of business in this State and has the proper permit.

(i) Tour Boats. — The Commission may issue permits to boats that conduct regularly scheduled tours upon the rivers or waterways of this State under the following conditions:

(1) A boat shall serve meals on each tour and shall have a dining area with seating for at least 36 people;

(2) A boat's gross receipts from food and non-alcoholic beverages shall be greater than its gross receipts from alcoholic beverages;

(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and (10), but no off-premises sales may be made pursuant to those permits;

(4) A boat shall have a home port in an area where issuance of any of the permits listed in subdivision (3) is legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid during tours that leave and return to the boat's home port, and apply regardless of whether the boat crosses into an area where sales are not legal, if the boat docks only at a port listed on the preannounced itinerary, except in an emergency; and

(5) A boat conducting tours along the intracoastal waterway and navigable waterways that enters into the intracoastal waterway, pursuant to a preannounced itinerary that includes visits to two or more cities, may serve alcoholic beverages pursuant to ABC permits issued according to the jurisdiction of its home port in the following manner:
   a. While on tour, alcoholic beverages may be served to passengers;
   b. While docked in any other port alcoholic beverages may be served only to tour passengers;
   c. During special city-sponsored events and festivals, in which case the boat may open its galley and bars at dockside to the general public and sell those alcoholic beverages that are lawful in the jurisdiction in which it is docked. Any sales in this manner shall be in accordance with the requirements of any ordinances of the jurisdiction in which the boat is docked.

(6) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(j) Recreation Districts. — Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages to qualified businesses in a recreation district.

A "recreation district" is an area that meets any of the following requirements:

(1) An area that is located in a county that has not approved the issuance of permits, has at least two cities that have approved the sale of malt beverages, wine, and the operation of an ABC store, and contains a facility of at least 450 acres where five or more public auto racing events are held each year.

(2) An area that is located in a county that borders a county which has held elections pursuant to G.S. 18B-600(f) and borders on another state and which (i) contains a facility of at least 225 acres where four or more public auto racing events are held each year or (ii) contains a facility of at least 140 acres where 80 or more motor sports events are held each year.

(3) A recreation district includes the area within a half-mile radius of a racing facility that meets the requirements of subdivision (1) or (2) of this subsection.

(4) Repealed by Session Laws 2004-203, s. 27, effective August 17, 2004.

(k) Residential Private Club and Sports Club Permits. — The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club, except if the sale of mixed beverages is not lawful within a jurisdiction and that locality has voted against the sale of mixed beverages in a referendum conducted on or after September 1, 2001. If the issuance of permits is prohibited by the exception in the previous sentence, the Commission may renew existing permits and may continue to issue permits for a business location that had previously held permits under this subsection. No permit may be issued to any residential private club or sports club that practices discrimination on the basis of race, gender or ethnicity.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county.

(*l*) Repealed by Session Laws 2004-203, s. 65, effective August 17, 2004.

(m) Interstate Interchange Economic Development Zones. —

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:
  a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;
  b. Operates ABC stores;
  c. Borders on another state; and
  d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet all of the following requirements:
  a. Located within one mile of any interstate highway interchange in that county;
  b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k); and

c. Is, or is located within one-quarter mile of, a hotel with 70 or more rooms.

(3) Repealed by Session Laws 2004-203, s. 28, effective August 17, 2004.

(n) National Historic Landmark District. — The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4) and (6) located within a National Historical Landmark as defined in 16 U.S.C. § 470a(a)(1)(B) located in a county that meets all of the following requirements:

(1) Has approved the sale of malt beverages and unfortified wine but not mixed beverages.

(2) Has at least one city that has approved the operation of an ABC store and the sale of mixed beverages.

(3) Has at least 150,000 population based on the last federal census.

(o) Expired.

(p) The Commission shall issue a special occasion permit under G.S. 18B-1001(8) to a mixed beverage permittee in a sports facility occupied by a major league professional sports team with suites available for sale or lease to patrons of the facility to authorize patrons to make available alcoholic beverages in those suites as if the patron were a host of a reception, party or other special occasion. If the patron occupying the suite so desires, alcoholic beverages by self-service may be made available to any person at least 21 years of age possessing a valid ticket to the event authorizing that person to occupy the suite. At no event may the patron make available a quantity of alcoholic beverages in excess of the amount a person is allowed to buy under G.S. 18B-303(a). A mixed beverage permittee who holds a permit shall provide mixed beverage tax paid spirituous liquor for resale by the container in approved sizes of no larger than 750 milliliters to the host or patron of the suite. This subsection does not authorize any person possessing a valid ticket to an event at the facility to bring alcoholic beverages onto the premises and consume those alcoholic beverages on the premises, or to remove those beverages from the suite.

(q) The hours for sales and consumption of alcoholic beverages on the premises of a permittee who meets the requirements of G.S. 18B-1009 shall be one hour earlier than permitted by G.S. 18B-1004(c). (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 23; 1985, c. 114, s. 2; c. 301; 1987, c. 515; c. 760; 1989, c. 360; c. 770, s. 49; c. 800, s. 18; 1991, c. 340, s. 1; c. 459, s. 7; 1991 (Reg. Sess., 1992), c. 920, s. 12; 1993, c. 415, ss. 17-19; c. 508, s. 6; 1995, c. 224, s. 1; c. 372, s. 2; c. 458, s. 8; c. 466, ss. 11-12; 1997-182, s. 3; 1997-395, s. 1; 1997-443, s. 16.27(a); 1999-462, ss. 2, 10, 12, 14; 2001-130, ss. 1, 1.4; 2004-199, s. 10; 2004-203, ss. 27, 28, 65; 2005-327, ss. 1, 2, 4; 2006-227, s. 7; 2006-264, s. 100; 2007-323, s. 6.25.)

Local Modification. — Davie: 2001-130, ss. 1.1 to 1.3; Graham: 2001-130, ss. 1.1 to 1.3; Harnett: 2001-130, ss. 1.1 to 1.3; Lincoln: 2001-130, ss. 1.1 to 1.3; McDowell: 2001-130, ss. 1.1 to 1.3; Swain: 2001-130, ss. 1.1 to 1.3; Yancey: 2001-130, ss. 1.1 to 1.3.

Editor's Note. — Session Laws 1995, c. 496, s. 13.1(a), effective July 27, 1995, repealed Session Laws 1995, c. 466, s. 12.1, which would have added, effective October 1, 1995, subsection (*l*), regarding the issuance of permits to restaurants operated as a part of a deep saltwater marina.

Subsection (k) of this section was amended by Session Laws 2001-130, ss. 1 and 1.4, in the coded bill drafting format provided by G.S. 120-20.1. The amendment by 2001-130, s. 1.4, failed to incorporate changes made by Session Laws 2001-130, s. 1. This section is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2005-327, s. 3, provides: "G.S. 18B-1006(o), as enacted by Section 2 of this act, shall expire on December 31, 2005, and shall apply only to a wine festival where 15 or more wineries will be exhibiting their wines, the event is sponsored by a nonprofit organization, and the event lasts for not more than two days. The permits issued pursuant to G.S. 18B-1006(o) shall be valid only for the two days of the event."

Session Laws 2005-327, s. 4, was codified as subsection (p) of this section at the direction of the Revisor of Statutes.

§ 18B-1006.1. Additional requirement for certain permittees to recycle beverage containers.

Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall separate, store, and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises. A permittee has satisfied the requirements of this section if it implements a recycling program that meets the minimum standards of the model recycling program developed by the Commission pursuant to G.S. 130A-309.14(m). Failure to comply with the requirements of this section shall not be grounds for revocation of a permit. A conviction for violation of this section shall not constitute an alcoholic beverage offense within the meaning of G.S. 18B-900(a)(4). (2005-348, s. 1; 2007-402, s. 2(a); 2008-187, s. 35.5.)

Editor's Note. — For a prior provision similar to G.S. 18B-902(h), see S.L. 2007-402, s. 2(d).

Effect of Amendments. — Session Laws 2008-187, s. 35.5, effective August 7, 2008, added the last sentence.

§ 18B-1007. Additional requirements for mixed beverages permittees.

(a) Purchases. — A mixed beverages permittee may purchase spirituous liquor for resale as mixed beverages and a guest room cabinet permittee may purchase spirituous liquor for resale from a guest room cabinet only at an ABC store designated by a local board and only with a purchase-transportation permit issued by that local board under G.S. 18B-403 and 18B-404.

(b) Handling Bottles. — It shall be unlawful for a mixed beverages permittee or the permittee's agent or employee to do any of the following:

(1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages or from a guest room cabinet.

(2) Refill any spirituous liquor container having a mixed beverages tax stamp with any other alcoholic beverage, or add to the contents of such a container any other alcoholic beverage.

(3) Transfer from one container to another a mixed beverages tax stamp.

(4) Possess any container of spirituous liquor not bearing a mixed beverages tax stamp, except for containers being brought onto the premises by the host of a private function under a special occasion permit.

(c) Price List. — Each mixed beverages permittee shall have available for its customers the printed prices of the most common or popular mixed beverages offered for sale by the permittee. Violation of this subsection shall not be a criminal offense, but shall be punishable under G.S. 18B-104.

(d) When a temporary mixed beverages permit has been issued to a new permittee for the continuation of a business at the same location, the permittee going out of business may sell existing mixed beverages inventory to the new permittee, and the Commission may request that the local ABC board restamp the inventory with the mixed beverages tax stamp assigned by the local board to the new mixed beverages permittee. (1981, c. 412, s. 2; c. 746, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 20; 1989, c. 800, s. 15; 1991, c. 565, ss. 6, 7; 1991 (Reg. Sess., 1992), c. 920, s. 8; 1995, c. 466, s. 13.)

§ 18B-1008. Rules concerning retail permits.

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also include requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, and that the club provide facilities or activities other than those directly related to the use of alcoholic beverages. (1981, c. 412, s. 2; 2009-381, s. 1.)

Editor's Note. — Session Laws 2009-381, s. 2, provides: "The Alcoholic Beverage Control Commission shall examine on a continuing basis the record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs, and shall report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report shall be submitted prior to the convening of the 2011 Regular Session of the General Assembly, and shall include the period from July 1, 2009, through December 31, 2010."

Effect of Amendments. — Session Laws 2009-381, s. 1, effective July 31, 2009, in the third sentence, deleted "but need not be limited to" following "may also include" and deleted "and that the club have a waiting period for membership" at the end and made a related change, and deleted the former last sentence, which read: "A waiting period required by the Commission shall not exceed 30 days."

§ 18B-1009. In-stand sales.

Nothing in this Chapter shall be construed to prohibit a retail permittee from selling for consumption, malt beverages in the seating areas of stadiums, ballparks, and other similar public places with a seating capacity of 60,000 or more during professional sporting events, in municipalities with a population greater than 450,000, according to the most recent estimate of population made by the Office of State Budget and Management, provided that:

(1) The seating areas are designated as part of the retail permittee's licensed premises;

(2) The retail permittee has notified the Commission, in writing, of its intent to sell malt beverages in the seating areas at sporting events;

(3) Service of food and nonalcoholic beverages is available in the seating areas;

(4) The retail permittee has certified to the Commission that it has trained its employees:

  a. To identify underage persons and intoxicated persons; and

  b. To refuse to sell malt beverages to those persons as required by G.S. 18B-305; and

(5) The employees do not verbally shout or hawk the sale of malt beverages. (1997-167, s. 1; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§§ 18B-1010 through 18B-1099: Reserved for future codification purposes.

ARTICLE 11.

Commercial Activity.

§ 18B-1100. Commercial permits.

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler permit
(18) Cider and vinegar manufacturer
(19) Wine producer permit
(20) Malt beverage special event permit. (1981, c. 412, s. 2; c. 747, s. 59; 1989, c. 737, s. 1; 1995, c. 404, s. 3; 1997-134, s. 1; 2001-262, s. 8; 2001-487, s. 49(g); 2009-377, s. 3.)

Editor's Note. — Session Laws 2009-377, in the preface, provides that: "Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

"Whereas, North Carolina's wineries have blossomed into a $1,000,000,000 industry in North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

"Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

"Whereas, North Carolina's craft brewers also are a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

"Whereas, North Carolina's craft brewers also could serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

"Whereas, North Carolina is now being recognized as a highly respected state for specialty malt beverages; and

"Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; and

"Whereas, the North Carolina General Assembly reaffirms its support of State-based alcohol regulation and the three-tier distribution of wine and malt beverages; Now, therefore,"

Effect of Amendments. — Session Laws 2009-377, s. 3, effective October 1, 2009, deleted punctuation at the end of subdivisions (18) and (19) and added subdivision (20).

§ 18B-1101. Authorization of unfortified winery permit.

The holder of an unfortified winery permit may:

(1) Manufacture unfortified wine;
(2) Sell, deliver and ship unfortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws,

except that wine may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(2a) Receive, in closed containers, unfortified wine produced inside or outside North Carolina under the winery's label from grapes, berries, or other fruits owned by the winery, and sell, deliver, and ship that wine to wholesalers, exporters, and nonresident wholesalers in the same manner as its wine manufactured in North Carolina. This provision may be used only by a winery during its first three years of operation or when there is substantial damage to its grapes, berries, or other fruits from catastrophic crop loss. This provision may be used only three years out of every 10 years and notice must be given to the Commission each time this provision is used;

(3) Ship its wine in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001, 18B-1001.1, and 18B-1001.2, and other applicable provisions of this Chapter;

(4) Furnish or sell "short-filled" packages, on which State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(5) Regardless of the results of any local wine election, sell the wine owned by the winery at the winery for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001;

(6) Sell the wine manufactured by the winery or produced under the winery's label under subdivision (2a) of this section for on- or off-premise consumption at no more than three other locations in the State, upon obtaining the appropriate permit under G.S. 18B-1001;

(6a) Receive, in closed containers, and sell at the winery, unfortified wine produced inside or outside North Carolina under contract with the winery. Such contract wine must have the winery's name clearly displayed on each bottle. The contract wine may be sold also at affiliated retail outlets of the winery physically located on or adjacent to the winery. Any wine received by a winery under this provision must be made available for sale by the winery to wholesalers for distribution to retailers, without discrimination, in the same manner as if the wine were being imported by the winery;

(7) Obtain a wine wholesaler permit to sell, deliver, and ship at wholesale unfortified wine manufactured at the winery. The authorization of this subdivision applies only to a winery that annually sells, to persons other than exporters and nonresident wholesalers when the purchase is not for resale in this State, no more than 100,000 gallons of unfortified wine manufactured by it at the winery;

(8) Allow winemaking on premises as allowed by a permit issued pursuant to G.S. 18B-1001(17).

A sale under subdivision (4) shall not be considered a retail or wholesale sale under the ABC laws. (1973, c. 511, ss. 1, 2; 1975, c. 411, s. 6; 1979, c. 224; 1981, c. 412, s. 2; c. 747, s. 60; 1985, c. 89, s. 4; 1989, c. 800, s. 2; 2001-262, s. 2; 2001-487, s. 49(b); 2002-102, s. 2; 2003-402, s. 6; 2004-135, s. 2; 2004-199, s. 11; 2007-402, s. 3.)

Editor's Note. — The punctuation at the end of subdivision (7) was changed from a period to a semicolon at the direction of the Revisor of Statutes.

CASE NOTES

Local preference provision located in the statute was declared unconstitutional as discriminatory against interstate commerce in violation of U.S. Const. art. I, § 8, cl. 3, and the provision was not saved by U.S. Const. amend. XXI. Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

Cited in Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-1102. Authorization of fortified winery permit.

The holder of a fortified winery permit may:

(1) Manufacture, purchase, import and transport brandy and other ingredients and equipment used in the manufacture of fortified wine;

(2) Sell, deliver and ship fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(3) Ship its wine in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001, 18B-1001.1, and 18B-1001.2, and other applicable provisions of this Chapter;

(4) Furnish or sell "short-filled" packages, on which State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(5) Regardless of the results of any local wine election, sell the winery's wine for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001.

A sale under subdivision (4) shall not be considered a retail or wholesale sale under the ABC laws. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 411, s. 6; c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 511, ss. 1, 2; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 224; c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; c. 747, s. 60; 1985, c. 89, s. 5; 1989, c. 800, s. 3; 2003-402, s. 7.)

§ 18B-1103. Authorization of limited winery permit.

(a) Special Qualifications. — Any winery which holds an unfortified winery permit and which produces its wine principally from honey, grapes or other fruit or grain grown in this State may obtain a limited winery permit.

(b) Authorized Acts. — The holder of a limited winery permit may give visitors free tasting samples of the wine. The Commission may issue rules regulating these tastings. (1981, c. 412, s. 2; c. 747, s. 61.)

§ 18B-1104. Authorization of brewery permit.

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 25,000 barrels, as defined in G.S. 81A-9, of malt beverages produced by it per year. A brewery not exceeding the sales quantity limitations in this subdivision may also sell the malt beverages manufactured by the brewery at not more than three other locations in the State upon obtaining the appropriate permits under G.S. 18B-1001. A brewery operating any additional retail location pursuant to this subdivision shall also offer for sale at that location a reasonable selection of competitive malt beverage products.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1985, c. 596, s. 2; 1989, c. 800, s. 4; 1991 (Reg. Sess., 1992), c. 920, s. 9; 1993, c. 415, s. 20; 2003-430, s. 1; 2004-203, s. 29.)

§ 18B-1105. Authorization of distillery permit.

(a) Authorized Acts. — The holder of a distillery permit may:

(1) Manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous liquor;

(2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations;

(3) Transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.

(b) Distilleries for Fuel Alcohol. — Any person in possession of a Federal Operating Permit pursuant to Title 27, Code of Federal Regulations, Part 201.64 through 201.65 or Part 201.131 through 201.138 shall obtain a fuel alcohol permit before manufacturing any alcohol. The permit shall entitle the permittee to perform only those acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating Permit shall apply to the State permit. (1979, 2nd Sess., c. 1329, s. 1; 1981, c. 412, s. 2; 1989, c. 800, s. 5.)

§ 18B-1105.1. Authorization of liquor importer/bottler permit.

The holder of a liquor importer/bottler permit may:

(1) Receive spirituous liquor in closed containers into foreign trade zones at the State Port facilities in Morehead City and Wilmington from ships docked at the State Port facilities for the purpose of bottling, packaging, or labeling.

(2) Bottle, package, or label in this State spirituous liquor imported or received into a foreign trade zone pursuant to this section.

(3) Receive spirituous liquor in closed containers into the foreign trade zones at the State Port facilities in Morehead City and Wilmington from ships docked at the State Port facilities for storage, sale, shipment, and transshipment to the State or a local ABC board warehouse or, subject to the laws of other jurisdictions, to private or public agencies or establishments of other states or nations.

(4) Subject to the record-keeping requirements of G.S. 18B-1115, transport into or out of the foreign trade zones at the State Port facilities in Morehead City and Wilmington, the maximum amount of liquor allowed under federal law, if the transportation is related to the bottling, packaging, labeling, sale, or storage permitted by this section. (1995, c. 404, s. 1.)

§ 18B-1106. Authorization of wine importer permit.

(a) Authorization. — The holder of a wine importer permit may:

(1) Import fortified and unfortified wines from outside the United States in closed containers;

(2) Store those wines;

(3) Sell those wines to wine wholesalers for purposes of resale.

(b) Distribution Agreements. — Wine distribution agreements are governed by Article 12 of this Chapter.

(c) The holder of a wine importer permit may import and sell to wholesalers only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1983, c. 85, s. 1; 1993, c. 415, s. 21; 2006-227, s. 11.)

§ 18B-1107. Authorization of wine wholesaler permit.

(a) Authorization. — The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified wine. The wine must be received from one of the following:

a. A primary American source of supply for that wine as recognized by the Commission or as verified by the wholesaler.

b. A licensed North Carolina wholesaler who received the wine from a primary American source of supply and with whom the second wholesaler has a subcontracting agreement for distribution of the wine.

c. Another wholesaler from whom the purchasing wholesaler is purchasing the wholesaler's business or from whom the wholesaler is purchasing the brand or distribution rights for the wine being received.

d. Another wholesaler who also has distribution rights for the wine being received and from whom the wholesaler is acquiring the wine in order to address a temporary inventory shortage.

(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws.

(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue.

(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the Commission.

(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked "out-of-date" by the wholesaler.

(b) Distribution Agreements. — Wine distribution agreements are governed by Article 12 of this Chapter. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1983, c. 85, s. 1; 1997-134, s. 4; 2006-227, s. 12.)

CASE NOTES

Cited in Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-1108. Authorization of malt beverages importer permit.

The holder of a malt beverages importer permit may:

(1) Import malt beverages from outside the United States in closed containers;

(2) Store those malt beverages;

(3) Sell those malt beverages to malt beverage wholesalers for purposes of resale. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1993, c. 415, s. 22.)

§ 18B-1109. Authorization of malt beverages wholesaler permit.

(a) Authorization. — The holder of a malt beverages wholesaler permit may:

(1) Receive, possess and transport shipments of malt beverages;

(2) Sell, deliver and ship, in closed containers and in quantities of one case or container or more, malt beverages of any brand filed pursuant to G.S. 18B-1303(a), to wholesalers or retailers licensed under this Chapter, as authorized by the ABC laws;

(3) Furnish and sell malt beverages filed pursuant to G.S. 18B-1303(a) to its employees subject to the rules of the Commission and the Department of Revenue;

(4) In locations where the sale is legal, furnish malt beverages of any brand filed pursuant to G.S. 18B-1303(a) to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to the rules of the Commission.

(b) Repealed by Session Laws 1989, c. 142, s. 3. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; c. 747, s. 62; 1989, c. 142, s. 3; 1991, c. 459, s. 8.)

§ 18B-1110. Authorization of bottler permit.

(a) Authorization. — The holder of a bottler permit may:

(1) Receive, possess and transport shipments of malt beverages, unfortified wine and fortified wine;

(2) Bottle, sell, deliver and ship malt beverages, unfortified wine, and fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws;

(3) Furnish or sell packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State.

A sale or gift under subdivision (3) shall not be considered a retail or wholesale sale under the ABC law.

(b) Distribution Agreements. — Wine distribution agreements are governed by Article 12 of this Chapter. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1983, c. 85, s. 1.)

§ 18B-1111. Authorization of salesman permit.

(a) Authorized Acts. — The holder of a salesman permit may sell and transport malt beverages for a malt beverage wholesaler or sell and transport unfortified and fortified wine for a wine wholesaler.

(b) Persons Required to Obtain Permit. — All route salesmen and salesmen working at a wholesaler's warehouse shall obtain the permit described in this section. All salesmen shall be at least 21 years old.

(c) Validity Period. — A salesman permit shall be valid as provided in G.S. 18B-903(a), except that it shall be valid only so long as the salesman is employed by the same wholesaler. (1951, c. 378, ss. 1, 2, 5-8; 1963, c. 426, s. 13; 1971, c. 872, s. 1; 1975, c. 330, s. 2; c. 411, s. 8; 1981, c. 412, s. 2.)

§ 18B-1112. Authorization of vendor representative permit.

(a) Authorized Acts. — The holder of a vendor representative permit may represent an unfortified winery, fortified winery, limited winery, brewery, bottler, importer, nonresident malt beverage vendor, or nonresident wine vendor, either as an employee or an agent, to solicit orders for that commercial permittee's product. The vendor representative may sell, deliver, and ship alcoholic beverages in this State only to permittees to whom the commercial permittee he represents may sell, deliver, or ship.

(b) Number of Permits. — A vendor representative shall secure a separate permit for each commercial permittee he represents. A permit may not be issued without the approval of the commercial permittee. (1981, c. 747, s. 63; 1981 (Reg. Sess., 1982), c. 1262, s. 21.)

§ 18B-1113. Authorization of nonresident malt beverage vendor permit.

The holder of a nonresident malt beverage vendor permit may sell, deliver, and ship malt beverages in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The malt beverages must come to rest at the licensed premises of a malt beverage wholesaler in this State before being resold to a retailer. A nonresident malt beverage vendor permit may be issued to a brewery, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship malt beverages into this State. (1981, c. 747, s. 63; 1993, c. 415, s. 23.)

§ 18B-1114. Authorization of nonresident wine vendor permit.

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer. A nonresident wine vendor permit may be issued to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a nonresident wine vendor permit may sell, deliver, and ship into this State only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a nonresident wine vendor must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States. (1981, c. 747, s. 63; 1993, c. 415, s. 24; 2006-227, s. 13.)

CASE NOTES

Constitutionality. — Provisions of North Carolina's alcoholic beverage code, which prohibited out-of-state wineries from selling wine directly to North Carolina residents but allowed North Carolina wineries to make direct sales, violated the Commerce Clause, and state officials were enjoined from enforcing those provisions. Beskind v. Easley, 197 F. Supp. 2d 464, 2002 U.S. Dist. LEXIS 6045 (W.D.N.C. 2002).

Cited in Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-1114.1. Authorization of winery special event permit.

(a) Authorization. — The holder of an unfortified winery permit, a limited winery permit, a viticulture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission.

(b) Limitation. — A winery special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of unfortified wine. (1989, c. 737, s. 2; 1991, c. 267, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 24; 1993, c. 553, s. 71; 2001-262, s. 3; 2001-487, s. 49(e); 2005-350, s. 3(b).)

§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit. (1997-134, s. 2.)

§ 18B-1114.3. Authorization of wine producer permit.

(a) Authorization. — The holder of a wine producer permit may:

(1) Ship crops grown on land owned by it in North Carolina to a winery, inside or outside the State, for the manufacture and bottling of unfortified wine from those crops and may receive that wine back in closed containers.

(2) Sell, deliver, and ship the unfortified wine manufactured from its crops in closed containers to wholesalers and retailers licensed under this Chapter as authorized by the ABC laws and also sell to exporters and nonresident wholesalers when the purchase is not for resale in this State.

(3) Regardless of the results of any local wine election, sell the wine manufactured from its crops for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001.

(b) Limitation on Sales. — The holder of a wine producer permit may not sell, in total, annually, more than 20,000 gallons of wine manufactured off its premises from crops it has grown. (2001-262, s. 4; 2001-487, s. 49(c).)

§ 18B-1114.4. Viticulture/Enology course authorization.

(a) Authorization. — The holder of a viticulture/enology course authorization may:

(1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.

(2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.

(3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(4) Sell wines produced during the course, upon obtaining a permit under G.S. 18B-1001(4).

(b) Limitation. — Authorization for a viticulture/enology course shall be granted by the Commission only for a community college or college that offers a viticulture/enology program as a part of its curriculum offerings for students of the school. Wines may be manufactured only from grapes grown in a viticulture/enology course vineyard that is located on the school's campus or the school's contracted or leased property.

(c) The holder of a viticulture/enology course authorization who obtains a wine wholesaler permit under G.S. 18B-1107 subject to the limitation in subsection (a) of this section may obtain a winery special event permit under G.S. 18B-1114.1, and where the permit is valid may participate in approved events and sell at retail at those events any wine produced incident to the operation of the viticulture/enology program. The holder of a viticulture/enology course authorization may participate in not more than six winery special events within a 12-month period and may sell up to 25 cases of wine at each event. Net proceeds from the program's retail sale of wine pursuant to this subsection shall be retained by the school and used for support of the viticulture/enology program.

(d) The holder of a viticulture/enology course authorization shall not be considered a winery for the purposes of this Chapter or Chapter 105 of the General Statutes. (2002-102, s. 1; 2005-350, s. 3(a); 2009-539, s. 2.)

Effect of Amendments. — Session Laws 2009-539, s. 2, effective August 28, 2009, added subdivision (a)(4).

§ 18B-1114.5. Authorization of malt beverage special event permit.

(a) Authorization. — The holder of a brewery, malt beverage importer, or nonresident malt beverage vendor permit may obtain a malt beverage special event permit allowing the permittee to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission. Except for a brewery operating under the provisions of G.S. 18B-1104(7), all malt beverages sampled or sold pursuant to this section must be purchased from a licensed malt beverages wholesaler.

(b) Limitation. — A malt beverage special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of malt beverages. A malt beverage special event shall not be used as subterfuge for malt beverages suppliers to ship directly to retail permittees unless otherwise authorized by law. (2009-377, s. 4.)

Editor's Note. — Session Laws 2009-377, s. 5, made this section effective October 1, 2009.

Session Laws 2009-377, in the preface, provides that: "Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

"Whereas, North Carolina's wineries have blossomed into a $1,000,000,000 industry in North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

"Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

"Whereas, North Carolina's craft brewers also are a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

"Whereas, North Carolina's craft brewers also could serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

"Whereas, North Carolina is now being recognized as a highly respected state for specialty malt beverages; and

"Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; and

"Whereas, the North Carolina General Assembly reaffirms its support of State-based alcohol regulation and the three-tier distribution of wine and malt beverages; Now, therefore,"

§ 18B-1115. Commercial transportation.

(a) Permit Required. — Unless a person holds a permit which otherwise allows him to transport more than 80 liters of malt beverages other than draft malt beverages in kegs, 50 liters of unfortified wine, or eight liters of fortified wine or spirituous liquor, or is a retailer authorized to transport alcoholic beverages under G.S. 18B-405, each person transporting alcoholic beverages in excess of those quantities shall have the permit described in this section.

(b) When Transportation Legal. — No person may obtain a permit under this section to transport spirituous liquor unless the transportation is for delivery to a federal reservation over which North Carolina has ceded jurisdiction to the United States, for delivery to an ABC store, or for transport through this State to another state.

(c) Common Carriers. — Railroad companies and other common carriers having regularly established schedules of service in this State may transport alcoholic beverages into, out of, and between points in this State without a permit. Those companies shall keep accurate records of the character, volume and number of containers transported and shall allow the Commission and alcohol law-enforcement agents to inspect those records at any time. The Commission may require common carriers to make reports of shipments.

(d) Motor Vehicle Carriers. — Alcoholic beverages may be transported over the public highways of this State by motor vehicle carriers under the following conditions:

(1) The carrier shall notify the Commission of the character of the alcoholic beverages it will transport and of its authorization from the appropriate regulatory authority.

(2) The carrier shall obtain, at no charge, a fleet permit from the Commission authorizing the transportation.

(3) The driver or person in charge of each vehicle transporting alcoholic beverages shall possess a copy of the carrier's fleet permit certified by the carrier to be an exact copy of the original.

(4) The driver or person in charge of each vehicle transporting alcoholic beverages shall possess a bill of lading, invoice or other memorandum of shipment showing the name and address of the person from whom the alcoholic beverages were received, the character and contents of the shipment, the quantity and volume of the shipment, and the name and address of the person to whom the alcoholic beverages are being shipped.

(5) The driver or person in charge of each vehicle transporting the alcoholic beverages shall display all documents required by this section upon request of any law-enforcement officer. Failure to produce these documents or failure of the documents to disclose clearly and accurately the information required by this section shall be prima facie evidence of a violation of this section.

(6) Each carrier shall keep accurate records of character, volume and number of containers transported and shall allow the Commission and alcohol law-enforcement agents to inspect those records at any time. The Commission may require carriers to make reports of shipments.

(e) Transportation of Spirituous Liquor. — In addition to the requirements of subsection (d), motor vehicle carriers engaged in transporting spirituous liquor shall:

(1) Deposit with the Commission a surety bond for one thousand dollars ($1,000) conditioned that the carrier will not unlawfully transport spirituous liquor into or through this State. The bond, which shall be approved by the Commission, shall be payable to the State of North Carolina. If the bonded carrier is convicted of a violation covered by the bond, the proceeds of the forfeited bond shall be paid to the school fund of the county in which the liquor was seized.

(2) Include in its bill of lading, invoice or other memorandum of shipment the North Carolina code numbers of the spirituous liquor being transported.

(3) Include in its bill of lading, invoice or other memorandum of shipment the route which the vehicle will follow, and the vehicle shall not vary substantially from that stated route.

(f) Malt Beverages and Wine Transported by Boats. — The owner or operator of any boat may transport malt beverages, unfortified wine and fortified wine over the waters of this State if he satisfies all requirements of subsection (d).

(g) State Warehouse Carrier. — The Commission may exempt a carrier for the State or a local board warehouse from any of the requirements of this section provided that it determines that the requirements of this section are otherwise satisfied. (1923, c. 1, s. 15; C.S., s. 3411(o); 1939, c. 158, s. 503; 1971, c. 872, s. 1; 1975, c. 411, s. 7; 1977, c. 70, s. 20; c. 176, s. 7; 1979, c. 286, s. 5; 1981, c. 412, s. 2; c. 747, s. 63; 1987, c. 136, s. 9; 1989, c. 553, s. 4; 1993, c. 508, s. 7; 2005-335, s. 1.)

§ 18B-1116. Exclusive outlets prohibited.

(a) Prohibitions. — It shall be unlawful for any manufacturer, bottler, or wholesaler of any alcoholic beverages, or for any officer, director, or affiliate thereof, either directly or indirectly to:

(1) Require that an alcoholic beverage retailer purchase any alcoholic beverages from that person to the full or partial exclusion of any other alcoholic beverages offered for sale by other persons in this State; or

(2) Have any direct or indirect financial interest in the business of any alcoholic beverage retailer in this State or in the premises where the business of any alcoholic beverage retailer in this State is conducted; or

(3) Lend or give to any alcoholic beverage retailer in this State or his employee or to the owner of the premises where the business of any alcoholic beverage retailer in this State is conducted, any money, service, equipment, furniture, fixtures or any other thing of value.

A brewery qualifying under G.S. 18B-1104(7) to act as a wholesaler or retailer of its own malt beverages is not subject to the provisions of this subsection concerning financial interests in, and lending or giving things of value to, a wholesaler or retailer with respect to the brewery's transactions with the retail business on its premises. The brewery is subject to the provisions of this subsection, however, with respect to its transactions with all other wholesalers and retailers.

(b) Exemptions. — The Commission may grant exemptions from the provisions of this section. In determining whether to grant an exemption, the Commission shall consider the public welfare, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of this section.

(c) As used in this section, the phrase "giving things of value" shall not include the dividing or removing of individual containers of alcohol from larger packages of alcohol or the delivery of such to the retail permittee. (1945, c. 708, s. 6; 1953, c. 1207, s. 1; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 747, s. 63; 1993, c. 415, s. 25; 2005-380, s. 3.)

CASE NOTES

Cited in Beskind v. Easley, 325 F.3d 506, 2003 U.S. App. LEXIS 6603 (4th Cir. 2003).

§ 18B-1117: Repealed by Session Laws 1989, c. 142, s. 3.

§ 18B-1118. Purchase restrictions.

The holder of a malt beverage wholesaler, wine wholesaler, malt beverage importer, wine importer, or bottler permit may not purchase malt beverages or wine for resale in this State from a nonresident who does not have the proper nonresident vendor permit. (1985, c. 114, s. 3.)

§ 18B-1119. Supplier's financial interest in wholesaler.

(a) A supplier or an officer, director, employee or affiliate of a supplier may financially assist a proposed purchaser in acquiring ownership of a wholesaler's business by participation in a limited partnership arrangement in which the supplier, officer, director, employee, or affiliate is a limited partner and the proposed purchaser seeking to acquire ownership of the wholesaler's business is a general partner. Such limited partnership arrangement may exist for no longer than eight years. If the general partner defaults in the agreement with the limited partner, and the limited partner acquires title to the general partner's interest, the limited partner must divest itself of the general partner's interest within 180 days.

(b) A supplier or an officer, director, employee or affiliate of a supplier may financially assist a proposed purchaser in acquiring ownership of a wholesaler's business by making a business loan and taking as security the assets of the wholesaler's business. The business loan may exist for no longer than eight years. If the wholesaler defaults on the loan and it is necessary for the supplier to take title to the assets of the business, the supplier may operate the business for a period not to exceed 180 days, by which time the supplier must divest itself of the business. The supplier may make the subsequent purchaser a business loan, taking as security the assets of the wholesaler's business. It shall also be permissible for the wholesaler and supplier to agree on the sale of the wholesaler's business to the supplier, provided that the supplier shall divest itself of the wholesaler's business within 180 days.

(c) A supplier or an officer, director, employee or affiliate of a supplier may have a security interest in the inventory or property of its wholesaler to secure payment for such inventory or other loans for other purposes. (1989, c. 142, s. 2.)

§§ 18B-1120 through 18B-1199: Reserved for future codification purposes.

Article 12.

Wine Distribution Agreements.

§ 18B-1200. Construction; findings and purpose; exceptions.

(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

(1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

(2) To protect wine wholesalers against unfair treatment by wineries;

(3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all wine wholesalerships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207. (1983, c. 85, s. 2; 2005-340, s. 1; 2005-350, s. 4; 2006-264, s. 98; 2007-484, s. 37.)

Editor's Note. — Session Laws 2005-340, which added subsection (d), in s. 2 provided in part: "This act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act [August 26, 2005]."

Session Laws 2006-264, s. 98, as amended by Session Laws 2007-484, s. 37, repealed Session Laws 2005-350, s. 4, which made the same amendments to this section as were made by Session Laws 2005-340.

CASE NOTES

This Article is to be liberally construed in order to effectuate the intended policies of the act. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

Applicability of Article. — The clear language of this Article discloses an intention to govern (1) relations that were existing at the time of the effective date of the act, March 21, 1983, and (2) relations contemplated and entered into by parties since that time. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

With only one exception, (prohibition of unlawful discrimination in the awarding or maintaining of distribution agreements found in G.S. 18B-1202(4) and 18B-1215), the Wine Distribution Agreements Act only addresses existing relationships between a winery and its wholesaler; the remedies provided for in section 18B-1207 only implicate compensation to a wholesaler with a current distribution agreement. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

Standing under Article. — This Article does not give standing to a wholesaler seeking to purchase the business of a wine wholesaler who was in a relationship covered and protected by this Article. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

The North Carolina legislature did not intend to grant a right of action against a winery to a wholesaler seeking to buy rights under a winery's existing distribution agreement with another wholesaler. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

Wholesaler who did not have any prior relationship with a winery could not sue that winery under the act where the winery refused to accept the wholesaler as the transferee of the business of a wine wholesaler who did have an existing relationship with the winery. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

Cited in Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 679 F. Supp. 541 (W.D.N.C. 1987).

§ 18B-1201. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Agreement" means a commercial relationship between a wine wholesaler and a winery. The agreement may be of a definite or indefinite duration and is not required to be in writing. Any of the following constitutes prima facie evidence of an "agreement" within the meaning of this definition:

   a. A relationship whereby the wine wholesaler is granted the right to offer and sell a brand offered by a winery;
   b. A relationship whereby the wine wholesaler, as an independent business, constitutes a component of a winery's distribution system;
   c. A relationship whereby the wine wholesaler's business is substantially associated with a brand offered by a winery;
   d. A relationship whereby the wine wholesaler's business is substantially reliant on a winery for the continued supply of wine;

e. The shipment, preparation for shipment, or acceptance of any order by any winery or its agent for any wine or beverages to a wine wholesaler within this State;

f. The payment by a wine wholesaler and the acceptance of payment by any winery or its agent for the shipment of any order of wine or beverages intended for sale within this State.

(2) "Territory" or "sales territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between any wine wholesaler and winery for a brand offered by any winery. The term "area of primary sales responsibility" may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory.

(3) "Wine wholesaler" means any holder of a wine wholesaler permit, wine importer permit, or bottler permit issued under the authority of this Chapter.

(4) "Winery" means any holder of an unfortified winery permit, fortified winery permit, limited winery permit, or nonresident wine vendor permit issued under the authority of this Chapter who sells at least 1,000 cases of wine in North Carolina per year. (1983, c. 85, s. 2.)

Cross References. — For definition of "purchase," as used in this Article, see G.S. 18B-1213.

CASE NOTES

"Wine Wholesaler." — A Georgia company licensed to do business in North Carolina, which held a North Carolina permit for the wholesale distribution of wine and beer, was a "wine wholesaler" within the meaning of this Article. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

The definition of "wine wholesaler" in this section is not an exclusive definition, but is to be used unless the context requires otherwise. Collins Whsle. Distrib. Co. v. E. & J. Gallo Winery, 678 F. Supp. 593 (W.D.N.C. 1987), rev'd on other grounds, 867 F.2d 817 (4th Cir. 1989).

"Winery." — Company with North Carolina nonresident vendor permits for the sale and importation of its products, which had shipped more than 1,000 cases of wine into North Carolina on an annual basis, was a "winery" under this Article. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

§ 18B-1202. No inducement, coercion, or discrimination.

No winery may:

(1) Induce, coerce, or attempt to induce or coerce any wine wholesaler to accept delivery of any alcoholic beverage or any other commodity which has not been ordered by the wine wholesaler;

(2) Induce, coerce, or attempt to induce or coerce any wine wholesaler to do any illegal act by any means, including threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a winery and a wine wholesaler;

(3) Require a wine wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler in his privilege to sell a product offered by any other winery;

(4) Unlawfully discriminate on the basis of race, color, creed, sex, religion, or national origin in awarding or maintaining agreements covered by this Article. Wineries who contract with wholesalers in this State shall make reasonable efforts to establish and maintain agreements with wholesalers who are females and members of minority groups. (1983, c. 85, s. 2.)

CASE NOTES

Cited in Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

§ 18B-1203. Primary area of responsibility.

(a) Each agreement shall designate a sales territory of the wholesaler. No winery may enter into more than one agreement for each brand of wine or beverage it offers in any territory unless the Commission, using the standards of G.S. 18B-1204(4), orders otherwise. Territories served by a wine wholesaler on March 21, 1983, are designated sales territories within the meaning of this section. Within 30 days of the effective date of this Article, each winery shall notify the Commission in writing of all designations of sales territories as of March 21, 1983. Redesignations occurring after March 21, 1983, shall be reported to the Commission within 30 days. No provisions of this Article, however, may prohibit the continuation of a multi-wholesaler agreement entered into before March 21, 1983, as between the winery and the original wine wholesalers thereto.

(b) This section may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory. (1983, c. 85, s. 2.)

§ 18B-1204. Cancellation.

Notwithstanding the terms, provisions, or conditions of any agreement, no winery may amend, cancel, terminate, or refuse to continue to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation. "Good cause" does not include a change in ownership of a winery. "Good cause" does include:

(1) Revocation of the wholesaler's permit or license to do business in this State;
(2) Bankruptcy or receivership of the wholesaler;
(3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler; or
(4) Failure of the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, including a substantial failure by a wine wholesaler to:
    a. Maintain a sales volume of the brands offered by the winery, or
    b. Render services comparable in quality, quantity, or volume to the sales volumes maintained and services rendered by other wholesalers of the same brands within the State.

In any determination as to whether a wholesaler has failed to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets, demand for the products applicable to the territory of the wholesaler in question and to comparable territories, and any reasonable sales quota set by the agreement. The burden of proving good cause for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation is on the winery. (1983, c. 85, s. 2.)

CASE NOTES

Cited in Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

§ 18B-1205. Notice of intent to terminate.

(a) Except as provided in subsection (c), a winery shall provide a wholesaler at least 90 days prior written notice of any intention to amend, terminate, cancel, or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Commission, shall state all the reasons for the intended amendment, termination, cancellation, or nonrenewal.

(b) When the reasons relate to conditions that can be rectified by the wholesaler, he has 60 days in which to do so. If the wholesaler rectifies the conditions within the 60-day period, he shall give written notice thereof to the winery and to the Commission. If the wholesaler has rectified the conditions, the proposed amendment, termination, cancellation, or nonrenewal is void, except that when the winery contends that the wholesaler has not completely rectified the conditions, the winery may, within 15 days after the expiration of the 60-day period, request a hearing before the Commission to determine if the wholesaler has rectified all the conditions.

(c) When the reasons relate to conditions that cannot be rectified by the wholesaler within the 60-day period, the wholesaler may request a hearing before the Commission to determine if the winery has good cause for the amendment, termination, cancellation, or nonrenewal of the agreement. The burden of proving good cause for the amendment, termination, cancellation, or nonrenewal is on the winery.

(d) Upon receiving a written request from the winery or wholesaler for a hearing, the Commission shall, after notice and hearing, determine if the wholesaler has rectified the conditions or if good cause exists for the amendment, termination, cancellation, or nonrenewal of the agreement, as appropriate. In any case in which a petition is made to the Commission for such a determination, the agreement in question shall continue in effect, pending the Commission's decision and any judicial review thereof.

(e) In all proceedings before the Commission, the Commission shall ensure that no agreements covered by this Article result in unlawful discrimination on the basis of race, color, creed, sex, religion, or national origin.

(f) No notice is required and an agreement may be immediately terminated, amended, canceled, or allowed to expire if the reason for the amendment, termination, cancellation, or nonrenewal is:

(1) The bankruptcy or receivership of the wholesaler;
(2) An assignment for the benefit of creditors or similar disposition of the assets of the business; or
(3) Revocation of the wholesaler's permit or license. (1983, c. 85, s. 2.)

CASE NOTES

Commission, Not Court, Initially Conducts Hearing. — Petition filed by distributor with the ABC Commission, asking for a hearing on supplier's appointment of another distributor as its representative in the Charlotte-Mecklenburg marketing area and its termination of wholesale distribution agreement with petitioner, and asking for official notification from the Commission to supplier that pursuant to G.S. 18B-1200 et seq. the distribution agreement would continue in effect pending the Commission's decision and any judicial review, was improperly dismissed by the trial court, as this section expressly gives authority to the Commission to conduct a hearing on such a contract dispute, and directly spells out what the status of a contract shall be while under review by both the agency and the judiciary.

Empire Distribs. of N.C., Inc. v. North Carolina ABC Comm'n, 85 N.C. App. 528, 355 S.E.2d 524 (1987).

Cited in Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

§ 18B-1206. Transfer of business.

(a) No winery may unreasonably withhold or delay consent to any transfer of the wholesaler's business or transfer of the stock or other interest in the wholesaleship whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of the winery's wholesalers.

(b) Notwithstanding subsection (a), no winery may withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the family of the wholesaler. Subsequent to such a transfer, the rights and obligations of the wholesaleship and its owners are in all respects governed by the provisions of this Chapter. As used in this subsection, "family" means the spouse, parents, siblings, and lineal descendants, including those by adoption, of the wholesaler. (1983, c. 85, s. 2.)

CASE NOTES

This Article provides a protective mechanism which allows wholesalers to sell their businesses along with their existing relationships with wineries. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

Who Is Protected by Article. — This section, governing the transfer of businesses, protects the transferor wholesaler, as well as "the wholesaler to be substituted." Collins Whsle. Distrib. Co. v. E. & J. Gallo Winery, 678 F. Supp. 593 (W.D.N.C. 1987), rev'd on other grounds, 867 F.2d 817 (4th Cir. 1989).

Plaintiff wholesale distributing company, which was incorporated for the purpose of acquiring a beer and wine wholesale business, and entered an agreement with a franchisee of defendant for the purchase by plaintiff of franchisee's wine and beer wholesale business, conditioned upon defendant's approval of transfer of the franchise, was a "wholesaler" under subsection (a) of this section, and was entitled to the judicial protection of G.S. 18B-1207(a). Collins Whsle. Distrib. Co. v. E. & J. Gallo Winery, 678 F. Supp. 593 (W.D.N.C. 1987), rev'd on other grounds, 867 F.2d 817 (4th Cir. 1989).

This section is intended to protect wholesalers with existing wholesale distribution agreements with wineries, not prospective transferees of those agreements. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

The North Carolina Wine Distribution Agreement Act refers to the qualifications of the "wholesaler to be substituted" not for the purpose of creating any rights in favor of a prospective transferee, but for the purpose of conditioning a winery's right to withhold its consent to a transfer of business by an existing distributor; distributor, not plaintiff, who was contracting with distributor to buy distributorship, was the party to seek defendant winery's consent, and then pursue its remedies under the Act if consent were unreasonably withheld. Collins Whsle. Distrib. Co. v. E & J Gallo Winery, 867 F.2d 817 (4th Cir. 1989).

Standing Under Article. — This Article does not give standing to a wholesaler who is seeking to purchase the business of a wine wholesaler who is in a relationship covered and protected by this Article. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

Since a winery has a right of prior approval over a transfer of business under this section, it follows that if a winery does not give such approval, the wholesaler with the existing relationship, and not the proposed transferor, is the proper party to bring a suit to challenge the winery's refusal. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

Right of Prior Consent to Transfer. — A winery has a right of prior approval over a wholesaler's transfer of business under this section. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

Under this section, when there was a transfer of the wholesaler's business to a nonfamily member who did not meet the material and reasonable qualifications and standards required of the winery's wholesalers, the winery could withhold or delay its consent. The effect of the winery's refusal to consent was that the winery does not have to deal with the new wholesaler. Thus, in such a situation, the winery has a right of prior consent. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 679 F. Supp. 541 (W.D.N.C. 1987).

Right to Withhold Consent Where Wholesaler Does Not Meet Standards. — Subsection (a) of this section implies that a winery may withhold or delay its consent to a transfer of the wholesaler's business if the wholesaler to be substituted does not meet the material and reasonable qualifications and standards required. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 679 F. Supp. 541 (W.D.N.C. 1987).

The qualifications and standards that a winery requires of its wholesalers must be material and reasonable, and the winery may not unreasonably withhold or delay its consent to dealing with a new wholesaler. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 679 F. Supp. 541 (W.D.N.C. 1987).

Consent May Not Be Unreasonably Withheld. — If a wholesaler desires to transfer its business and be protected by this Article, then he should inform the wineries that have agreements with him of his intention to sell. The wineries would then be able to consent or withhold their consent to the transfer. Such consent, however, could not be unreasonably withheld. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

By necessary implication, subsection (b) of this section limits a right which subsection (a) grants, specifically, the right of prior consent. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 679 F. Supp. 541 (W.D.N.C. 1987).

§ 18B-1207. Judicial remedies.

(a) If a winery violates any provision of this Article, a wholesaler may maintain a suit against the winery. The court may grant injunctive and other appropriate relief, including damages to compensate the wholesaler for the value of the agreement and any good will, to remedy violations of this Article.

(b) Any winery that amends, cancels, terminates, or refuses to renew any wine agreement, or causes a wholesaler to resign from an agreement shall compensate the wine wholesaler for the wine wholesaler's wine inventory. The amount of compensation shall include the F.O.B. costs of the wine inventory and any freight charges incurred by the wine wholesaler in receiving them.

(c) For any violation of the provisions of this Article, the Commission may take any of the following actions against the winery:

(1) Suspend the winery's permit for a specific period of time no longer than three years;
(2) Revoke the winery's permit;
(3) Issue an order suspending the shipment of the winery's products to one or more designated sales territories previously served by the wholesaler who has been terminated or who is the successor in interest to a wholesaler who sold the winery's products in the designated territory.
(4) Impose a monetary penalty up to fifteen thousand dollars ($15,000) for a first offense and up to thirty-five thousand ($35,000) for the second offense. The clear proceeds of monetary penalties imposed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the winery an offer in compromise to pay a monetary penalty. The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.

(d) Notwithstanding the choice of forum agreed to by the parties, venue for all actions under this Article shall be determined by the trial judge based upon the convenience of witnesses and the promotion of the ends of justice. (1983, c. 85, s. 2; 1989, c. 800, ss. 16, 17; 1998-215, s. 28.)

CASE NOTES

Who Is Protected by Article. — This section, governing the transfer of businesses, protects the transferor wholesaler, as well as "the wholesaler to be substituted." Collins Whsle. Distrib. Co. v. E. & J. Gallo Winery, 678 F. Supp. 593 (W.D.N.C. 1987), rev'd on other grounds, 867 F.2d 817 (4th Cir. 1989).

Plaintiff wholesale distributing company, which was incorporated for the purpose of acquiring a beer and wine wholesale business, and entered an agreement with a franchisee of defendant for the purchase by plaintiff of franchisee's wine and beer wholesale business, conditioned upon defendants approval of transfer of the franchise, was a "wholesaler" under G.S. 18B-1206(a), and was entitled to the judicial protections of subsection (a) of this section. Collins Whsle. Distrib. Co. v. E. & J. Gallo Winery, 678 F. Supp. 593 (W.D.N.C. 1987), rev'd on other grounds, 867 F.2d 817 (4th Cir. 1989).

With only one exception, (prohibition of unlawful discrimination in the awarding or maintaining of distribution agreements under G.S. 18B-1202(4) and 18B-1215), the Wine Distribution Agreements Act only addresses existing relationships between a winery and its wholesaler; the remedies provided for in this section only implicate compensation to a wholesaler with a current distribution agreement. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

The North Carolina Wine Distribution Agreements Act refers to the qualifications of the "wholesaler to be substituted" not for the purpose of creating any rights in favor of a prospective transferee, but for the purpose of conditioning a winery's right to withhold its consent to a transfer of business by an existing distributor; distributor, not plaintiff, who was contracting with distributor to buy distributorship, was the party to seek defendant winery's consent, and then pursue its remedies under the Act if consent were unreasonably withheld. Collins Whsle. Distrib. Co. v. E & J Gallo Winery, 867 F.2d 817 (4th Cir. 1989).

Standing Under Article. — This act does not give standing to a wholesaler who was seeking to purchase the business of a wine wholesaler who in a relationship covered and protected by the act. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

Since a winery has a right of prior approval over a transfer of business under this section, it follows that if a winery does not give such approval, the wholesaler with the existing relationship, and not the proposed transferor, is the proper party to bring a suit to challenge the winery's refusal. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C.), aff'd, 859 F.2d 1200 (4th Cir. 1988).

The North Carolina legislature did not intend to grant a right of action against a winery to a wholesaler seeking to buy rights under a winery's existing distribution agreement with another wholesaler. Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

§ 18B-1208. Price of product.

No winery, whether by means of a term or condition of an agreement or otherwise, may directly or indirectly fix or maintain the prices at which the wholesaler may sell any wine or beverage. (1983, c. 85, s. 2.)

§ 18B-1209. Retaliatory action prohibited.

No winery may take retaliatory action against a wholesaler who files or manifests an intention to file a complaint alleging that the winery violated a State or federal law or rule. Retaliatory action includes refusal without good cause to continue the agreement or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement. (1983, c. 85, s. 2.)

§ 18B-1210. Management.

No winery may require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the winery. (1983, c. 85, s. 2.)

§ 18B-1211. No discrimination.

No winery may discriminate among its wholesalers in any business dealings, including the price of wine sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds. (1983, c. 85, s. 2.)

§ 18B-1212. No waiver.

No winery may require any wholesaler to waive compliance with any provision of this Chapter. Nothing in this Chapter, however, may be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties. (1983, c. 85, s. 2.)

§ 18B-1213. Obligations of purchaser.

The purchaser of a winery is obligated to all the terms and conditions of an agreement in effect on the date of the purchase, except for good cause, which includes,

(1) Revocation of the wholesaler's permit or license to do business in this State,
(2) Bankruptcy or insolvency of the wholesaler,
(3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, or
(4) Failure by the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery.

As used in this Article, "purchase" includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation. (1983, c. 85, s. 2.)

§ 18B-1214. Prohibited practices enumerated.

It is a violation of this Article for any winery, directly or indirectly, to engage in any of the following practices:

(1) To restrict the sale of any equity or indebtedness or the transfer of any securities of any wholesaler or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or indebtedness to employees, personnel of the wholesaler, or heirs of the principal owner, as long as basic financial requirements of the winery are complied with and the sale, transfer, or issuance does not have the effect of accomplishing a sale of the wholesaler;
(2) To impose unreasonable standards of performance upon a wholesaler;
(3) To prohibit directly or indirectly the right of free association among wholesalers for any lawful purpose. (1983, c. 85, s. 2.)

§ 18B-1215. Intent of nondiscrimination.

It is the intent of this Article that there shall be no unlawful discrimination based on race, color, creed, sex, religion, or national origin in any aspect of the awarding or maintaining of agreements covered by this Article. (1983, c. 85, s. 2.)

CASE NOTES

Cited in Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 859 F.2d 1200 (4th Cir. 1988).

§ 18B-1216. Relation of Article to other laws.

Nothing in this Article relieves a winery or wholesaler of any obligation, duty, or prohibition imposed by any other provision of this Chapter or by G.S. 75-1.1 or by any other provision of State law, and the remedies provided in this Article are nonexclusive. (1983, c. 85, s. 2.)

§§ 18B-1217 through 18B-1299: Reserved for future codification purposes.

Article 13.

Beer Franchise Law.

§ 18B-1300. Purpose.

Pursuant to the authority of the State under the Twenty-First Amendment to the United States Constitution, the General Assembly finds that regulation of the business relations between malt beverage manufacturers and importers and the wholesalers of such products is necessary to:

(1) Maintain stability and healthy competition in the malt beverage industry in this State.

(2) Promote and maintain a sound, stable and viable three-tier system of distribution of malt beverages to the public.

(3) Promote the compelling interest of the public in fair business relations between malt beverage suppliers and wholesalers, and in the continuation of beer franchise agreements on a fair basis.

(4) Maintain a uniform system of control over the sale, purchase and distribution of malt beverages in the State. (1989, c. 142, s. 1.)

CASE NOTES

Constitutionality. — The Beer Franchise Law does not unreasonably interfere with the rights of suppliers to freely contract with wholesalers in violation of due process or North Carolina's law of the land clause. Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998), cert. denied, 349 N.C. 231, 515 S.E.2d 705 (1998), cert. denied, 349 N.C. 360, 505 S.E.2d 884 (1998).

Cited in BJT, Inc. v. Molson Breweries USA, Inc., 848 F. Supp. 54 (E.D.N.C. 1994).

§ 18B-1301. Definitions.

(1) "Supplier" means a brewer, bottler, or importer of malt beverages, including anyone who holds a brewery, malt beverages importer or nonresident malt beverages vendor permit.

(2) "Wholesaler" means the holder of a malt beverages wholesaler permit. (1989, c. 142, s. 1; 1995, c. 466, s. 14.)

§ 18B-1302. Franchise agreement.

(a) Nature of Agreement. — A franchise agreement is a commercial relationship between a wholesaler and supplier of a definite or indefinite duration, whether written or oral, including:

(1) A relationship whereby a wholesaler is granted the right to offer and sell the brands of malt beverages offered by the supplier; or

(2) An agreement whereby a supplier grants to a wholesaler a license to use a trade name, trademark, service mark or related characteristic

and in which there is a community of interest in the marking of the products of the supplier by lease or otherwise.

(b) Existence of Agreement. — A franchise agreement as described in subsection (a) exists when:

(1) The supplier has shipped malt beverages to a wholesaler or accepted an order for malt beverages from the wholesaler;

(2) A wholesaler has paid or the supplier has accepted payment for an order of malt beverages intended for sale within this State;

(3) The supplier and wholesaler have filed with the Commission a distribution agreement as required by G.S. 18B-1303; or

(4) A supplier acquires the right to manufacture a malt beverage product, or the trade name for such product, or the right to distribute a product, for which a wholesaler has a franchise agreement. (1989, c. 142, s. 1; 2005-350, s. 5.)

CASE NOTES

Cited in Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998).

§ 18B-1303. Filing of distribution agreement; no discrimination.

(a) Filing. — It is unlawful for a supplier to provide malt beverages to a wholesaler unless the Commission has received notification from the supplier designating the brands of the supplier which the wholesaler is authorized to sell and the territory in which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. No supplier may provide by a distribution agreement for the distribution of a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute any brand of malt beverage to a retailer whose premises are located outside the territory specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however, with the approval of the Commission distribute malt beverages outside his designated territory during periods of temporary service interruption when requested to do so by the supplier and the wholesaler whose service is interrupted.

(b) No Discrimination. — A wholesaler shall service all retail permit holders within his designated territory without discrimination and shall make a good faith effort to make available to each retail permit holder in the territory each brand of malt beverage which the wholesaler has been authorized to distribute in that area.

(c) No Price Maintenance. — A franchise agreement shall not, either expressly or by implication or in its operation, establish or maintain the resale price of any brand of malt beverages by a wholesaler. (1989, c. 142, s. 1; 1991, c. 459, s. 9; 1993, c. 415, s. 28; 1995, c. 466, s. 15.)

CASE NOTES

"Brand" defined. — The term "brand" as used in the Beer Franchise Act means a common identifying name rather than a specific malt beverage product. Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998), cert. denied, 349 N.C. 231, 515 S.E.2d 705 (1998), cert. denied, 349 N.C. 360, 505 S.E.2d 884 (1998).

§ 18B-1304. Prohibitions.

It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

(1) Coerce or attempt to coerce or persuade a wholesaler to violate any provision of the ABC laws or rules of the Department of Revenue; or

(2) Alter in a material way, terminate, fail to renew, or cause a wholesaler to resign from, a franchise agreement with a wholesaler except for good cause and with the notice required by G.S. 18B-1305. (1989, c. 142, s. 1.)

CASE NOTES

Cited in Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998).

§ 18B-1305. Cause for termination of franchise agreement.

(a) Meaning of Good Cause. — Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

(b) Notice of Cause. — At least 90 days before altering, terminating or failing to renew a franchise agreement for good cause, the supplier must give the wholesaler written notice of the intended action and the specific reasons for it. If the cause for the alteration, termination or failure to renew is subject to correction by the wholesaler, and the wholesaler makes such correction within 45 days of receipt of the notice, the notice shall be void.

(c) Termination for Cause without Advance Notice. — A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:

(1) Insolvency of the wholesaler, the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.

(2) Revocation of the wholesaler's State or federal permit or license for more than 30 days.

(3) Conviction of the wholesaler, or of a partner or individual who owns ten percent (10%) or more of the partnership or stock of the wholesaler, of a felony which might reasonably be expected to adversely affect the goodwill or interest of the wholesaler or supplier. The provisions of this subdivision shall not apply, however, if the wholesaler or its existing partners or stockholders shall have the right to purchase the interest of the offending partner or stockholder, and such purchase is completed within 15 days of the conviction.

(4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its products.

(5) Failure of the wholesaler to pay for the supplier's products according to the established terms of the supplier.

(6) Assignment, sale or transfer of the wholesaler's business or control of the wholesaler without the written consent of the supplier, except as provided in G.S. 18B-1307.

(d) Absence of Good Cause. — Good cause for alteration, termination or failure to renew a franchise agreement does not include:

(1) The failure or refusal of the wholesaler to engage in any trade practice, conduct or activity which would violate federal or State law.

(2) The failure or refusal of the wholesaler to take any action which would be contrary to the provisions of this Article.

(3) A change in the ownership of the supplier or the acquisition by another supplier of the brewery, brand or trade name or trademark, or acquisition of the right to distribute a product, from the original supplier. (1989, c. 142, s. 1.)

CASE NOTES

Cited in Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998).

§ 18B-1306. Remedies for wrongful termination.

(a) Injunctive Relief. — A wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article may bring an action to enjoin such unlawful alteration, termination or failure to renew. The action may be brought in the county in which the wholesaler has its principal place of business or in any county in which the wholesaler receives or distributes the products in issue. Any injunction issued pursuant to this subsection shall require the wholesaler to supply the customers in its territory with their reasonable retail requirements and to otherwise serve the territory.

(b) Monetary Damages. — In lieu of injunctive relief, a wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article shall be entitled to recover monetary damages from the supplier. The amount to which the wholesaler is entitled shall be the value of the wholesaler's business distributing the supplier's products, including:

(1) The laid-in costs to the wholesaler of the inventory of the supplier's products, including any State and local taxes paid on the inventory by the wholesaler, plus a reasonable charge for handling of the products upon surrender of the inventory to the supplier.

(2) The fair market value of all assets, including ancillary businesses of the wholesaler used in distributing the supplier's products. The total compensation to be paid to the wholesaler shall be reduced, however, by any amount received by the wholesaler from sale of assets of the business used in distributing the supplier's products as well as by the value such assets have to the wholesaler unrelated to the supplier's products. "Fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at a time prior to the alteration, termination or failure to renew, when each possesses all information relevant to the transaction. (1989, c. 142, s. 1.)

CASE NOTES

Right of Wholesaler to Sue Wholesaler. — The Beer Franchise Law entitles one wholesaler to sue another based upon an alteration or termination of a franchise agreement. Mark IV Beverage, Inc. v. Molson Breweries USA, Inc., 129 N.C. App. 476, 500 S.E.2d 439 (1998), cert.

denied, 349 N.C. 231, 515 S.E.2d 705 (1998), cert. denied, 349 N.C. 360, 505 S.E.2d 884 (1998).

Cited in BJT, Inc. v. Molson Breweries USA, Inc., 848 F. Supp. 54 (E.D.N.C. 1994).

§ 18B-1307. Transfer of wholesaler's business.

(a) Right of Transfer to Designated Family Member upon Death. — Upon the death of a wholesaler, that individual's interest in the wholesaler business, including the rights under the franchise agreement with the supplier, may be transferred or assigned to a designated family member. The transfer or assignment shall not be effective until written notice is given to the supplier, but the supplier's consent is not required for the transfer or assignment. "Designated family member" means the deceased wholesaler's spouse, child, grandchild, parent, brother or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will or other testamentary device or under the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term "designated family member" also means the person appointed by the court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

(b) Approval of Certain Transfers. — Upon notice to and approval by the supplier, an individual owning an interest in a wholesaler may sell, assign or transfer that interest, including the wholesaler's rights under its franchise agreement with the supplier, to any qualified person. Within 30 days of receipt of notice of the intended sale, assignment or transfer, the supplier shall request any additional relevant, material information reasonably necessary for deciding whether to approve the transaction. The supplier shall have 30 days from receipt of that information to object to the sale, assignment or transfer. The supplier may object only if the proposed transferee fails to meet qualifications and standards that are nondiscriminatory, material, reasonable and consistently applied to North Carolina wholesalers by the supplier. The burden shall be upon the supplier to prove that the proposed transferee is not qualified.

(c) Damages. — A supplier who disapproves or prevents a proposed assignment or change of ownership in violation of this section shall be liable to the wholesaler who proposed to make the sale, assignment or transfer for the difference between the disapproved sale price and a subsequent actual price of a sale of the same assets completed within a reasonable period. If, however, the proposed transfer or sale was to a business associate at a bargain price, the amount of compensation shall be at least the fair market value of the interest proposed to be sold or transferred, minus the proceeds of an actual sale of the interest completed within a reasonable time. (1989, c. 142, s. 1.)

CASE NOTES

A plaintiff must allege both that a defendant acted unreasonably within the meaning of the statute and that the plaintiff (who meets the statutory standards) suffered the damages contemplated by the statute. Allied Distribs., Inc. v. Latrobe Brewing Co., 847 F. Supp. 376 (E.D.N.C. 1993).

Failure to State a Claim. — Where plaintiff pleaded a wrongful refusal to approve a transfer in accordance with subsection (b), there was no allegation that plaintiff suffered the kind of damages specified in subsection (c); therefore, plaintiff failed to state a claim upon which relief may be granted pursuant to this section. Allied Distribs., Inc. v. Latrobe Brewing Co., 847 F. Supp. 376 (E.D.N.C. 1993).

§ 18B-1308. Article part of all franchise agreements.

The provisions of this Article shall be part of all franchise agreements as defined in G.S. 18B-1302 and may not be altered by the parties. (1989, c. 142, s. 1.)

Chapter 18C.

North Carolina State Lottery.

Article 1.

General Provisions and Definitions.

Sec.
18C-101. Citation.
18C-102. Purpose and intent.
18C-103. Definitions.
18C-104 through 18C-109. [Reserved].

Article 2.

North Carolina State Lottery Commission.

18C-110. Establishment of the North Carolina State Lottery Commission to be a self-supporting agency of the State.
18C-111. Commission membership; appointment; selection of chair; vacancies; removal; meetings; compensation.
18C-112. Qualifications of Commissioners.
18C-113. Meetings; records.
18C-114. Powers and duties of the Commission.
18C-115. Reports.
18C-116. Audits.
18C-117 through 18C-119. [Reserved.]

Article 3.

North Carolina State Lottery Director.

18C-120. Selection of the Director; powers and duties.
18C-121. Accountability; books and records.
18C-122. Independent audits.
18C-123 through 18C-129. [Reserved.]

Article 4.

Operation of Lottery.

18C-130. Types of lottery games; lottery games and lottery advertising; certain disclosures and information to be provided.
18C-131. Sales and sale price of tickets and shares; sales to minors prohibited.
18C-132. Procedures for drawings and claiming prizes; payment of prizes; protection of information concerning certain prize winners.
18C-133. Lottery game-play rules and winner validation procedures.
18C-134. Setoff for debt collection against lottery prizes.
18C-135 through 18C-139. [Reserved.]

Article 5.

Lottery Game Retailers.

18C-140. Contracting with lottery game retailers.
18C-141. Selection of lottery game retailers.
18C-142. Compensation for lottery game retailers.
18C-143. Responsibilities of lottery game retailers.
18C-144 through 18C-149. [Reserved.]

Article 6.

Lottery Potential Contractors and Lottery Contractors.

18C-150. Procurements.
18C-151. Contracts.
18C-152. Investigation of lottery potential contractors.
18C-153 through 18C-159. [Reserved.]

Article 7.

North Carolina State Lottery Fund.

18C-160. North Carolina State Lottery Fund.
18C-161. Types of income to the North Carolina State Lottery Fund.
18C-162. Allocation of revenues.
18C-163. Expenses of the Lottery.
18C-164. Transfer of net revenues.
18C-165 through 18C-169. [Reserved.]

Article 8.

Miscellaneous.

18C-170. Preemption of local regulation.
18C-171. Lawful activity.
18C-172. Lottery Oversight Committee.
18C-173. Limits on compensation increases.

ARTICLE 1.

General Provisions and Definitions.

§ 18C-101. Citation.

This Chapter shall be known and may be cited as the North Carolina State Lottery Act. (2005-344, s. 1.)

Editor's Note. — Session Laws 2005-344, s. 14, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act."

Session Laws 2005-344, s. 15, provides: "The State Treasurer shall lend to the North Carolina State Lottery Commission, at a rate of interest comparable to short-term rates in the private capital market and with repayment terms satisfactory to both parties, sufficient funds to cover initial operating expenses of the Commission, except that the total amount borrowed by the Commission shall not exceed ten million dollars ($10,000,000). The borrowed funds shall be deposited in the North Carolina State Lottery Fund and shall be available for expenditure for the purposes set forth in this act without further action by the General Assembly. The Commission shall repay any funds lent to it pursuant to this section within twenty-four months after the effective date of this act."

CASE NOTES

North Carolina State Lottery Act, G.S. 18C-101 et seq., was not a revenue bill and, thus, it did not have to be enacted according to the requirements set forth in N.C. Const., Art. II, § 23. The law was not a revenue bill because it was not enacted to: (1) raise money on the credit of the State; (2) pledge the faith of the State directly or indirectly for the payment of any debt; or (3) impose any tax upon the people of the State, but, rather, involved a voluntary activity that incidentally raised revenue. Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§ 18C-102. Purpose and intent.

The General Assembly declares that the purpose of this Chapter is to establish a State-operated lottery to generate funds for the public purposes described in this Chapter. (2005-344, s. 1; 2005-276, s. 31.1(b).)

CASE NOTES

Not a Revenue Bill. — While the state-operated lottery according to G.S. 18C-102 was established to generate funds for the public purposes named in the state's lottery law, namely, the education-related projects outlined in the law's provisions, the revenue-raising purpose of the lottery was not a critical factor in determining whether the law imposed a tax and, thus, had to be enacted according to the requirements of N.C. Const., Art. II, § 23. Given the voluntary nature of participation on the lottery, the lottery law did not impose any tax upon people in North Carolina and, thus, was not a revenue bill subject to the N.C. Const., Art. II, § 23 enactment requirements. Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§ 18C-103. Definitions.

As used in this Chapter, unless the context requires otherwise:

(1) "Commission" means the North Carolina State Lottery Commission.

(2) "Commissioner" means a member of the Commission.

(3) "Director" means the person selected by the Commission to be the chief administrator of the North Carolina State Lottery.

(4) "Game" or "lottery game" means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).

(5) "Lottery" means any lottery game or series of games established and operated pursuant to this Chapter.

(6) "Lottery contractor" means a person other than a lottery retailer with whom the Commission has contracted for the purpose of providing goods or services to the Commission on an ongoing basis.

(6a) "Lottery supplier" means a person, other than a lottery retailer, with whom the Commission has contracted for the purpose of providing goods or services to the Commission for an individual purchase which may include a maintenance program.

(7) "Person" means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.

(7a) "Potential contractor" or "lottery potential contractor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission on an ongoing basis.

(8) "Retailer", "lottery retailer", or "lottery game retailer" means a person with whom the Commission has contracted to sell tickets or shares in lottery games.

(9) "Share" means any method of participation in a lottery game, other than by a ticket purchased on an equivalent basis with a ticket.

(10) "Ticket" means any tangible evidence authorized by the Commission to demonstrate participation in a lottery game.

(11) Repealed by Session Laws 2009-357, s. 5, effective July 27, 2009. (2005-344, s. 1; 2005-276, s. 31.1(c); 2009-357, s. 5; 2009-570, s. 32(a).)

Effect of Amendments. — Session Laws 2009-357, s. 5, effective July 27, 2009, in subdivision (6), added "on an ongoing basis" at the end; added subdivisions (6a) and (7a); and deleted subdivision (11), which read: " 'Vendor' or " 'lottery vendor' means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission."

Session Laws 2009-570, s. 32(a), effective August 28, 2009, inserted "or 'lottery potential contractor' " in subdivision (7a).

§§ 18C-104 through 18C-109: Reserved for future codification purposes.

Article 2.

North Carolina State Lottery Commission.

§ 18C-110. Establishment of the North Carolina State Lottery Commission to be a self-supporting agency of the State.

There is created the North Carolina State Lottery Commission to establish and oversee the operation of a Lottery. The Commission shall be located in the Department of Commerce for budgetary purposes only; otherwise, the Commission shall be an independent, self-supporting, and revenue-raising agency of the State. The Commission shall reimburse other governmental entities that provide services to the Commission. (2005-344, s. 1.)

CASE NOTES

State's lottery law was not a revenue bill, and, thus, its provisions such as G.S. 18C-110 and G.S. 18C-160 characterizing the state lottery commission as an independent, self-supporting, and revenue-raising agency were not enacted in violation of the requirements set forth in N.C. Const., Art. II, § 23. The law did not: (1) raise money on the credit of the State; (2) pledge the faith of the State directly or indirectly for the payment of any debt; or (3) impose any tax upon the people of the State, but rather, allowed citizens to participate in a voluntary activity that incidentally raised revenue. Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§ 18C-111. Commission membership; appointment; selection of chair; vacancies; removal; meetings; compensation.

(a) The Commission shall consist of nine members, five of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Commissioners may be removed by the appointing authority for cause. The Governor shall select the chair of the Commission from among its membership, who shall serve at the pleasure of the Governor.

(b) Of the initial appointees of the Governor, three members shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall serve a term of two years, and one member shall serve a term of three years. All succeeding appointments shall be for terms of five years. Members shall not serve for more than two successive terms.

(c) Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.

(d) The Commission shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

(e) Members of the Commission shall receive per diem, subsistence, and travel as provided in G.S. 138-5 and G.S. 138-6. (2005-344, s. 1; 2005-276, s. 31.1(d); 2006-259, s. 8(c).)

§ 18C-112. Qualifications of Commissioners.

(a) Of the members of the Commission appointed by the Governor, at least one member shall have a minimum of five years' experience in law enforcement.

(b) Of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall be a certified public accountant.

(c) Of the members of the Commission appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall have retail sales experience as an owner or manager.

(d) In making appointments to the Commission, the appointing authorities shall consider the composition of the State with regard to geographic representation and gender, ethnic, racial, and age composition. (2005-344, s. 1; 2005-276, s. 31.1(e).)

§ 18C-113. Meetings; records.

(a) Meetings of the Commission shall be subject to Article 33C of Chapter 143 of the General Statutes.

(b) Except as provided in this Article, records of the Commission shall be open and available to the public in accordance with Chapter 132 of the General Statutes.

(c) Personnel records of the Commission are subject to Article 7 of Chapter 126 of the General Statutes.

(d) Only the following information concerning a lottery winner is a public record: (i) name, (ii) city and state of residence, (iii) game played, (iv) amount won, and (v) date won. For purposes of this subsection, amount won means the nominal prize amount, the cash payment if different from the nominal prize amount, and the cash payment after taxes are withheld. (2005-344, s. 1; 2009-357, s. 6.)

Effect of Amendments. — Session Laws 2009-357, s. 6, effective July 27, 2009, added subsection (d).

§ 18C-114. Powers and duties of the Commission.

(a) The Commission shall have the following powers and duties:

(1) To specify the types of lottery games and gaming technology to be used in the Lottery.

(2) To prescribe the nature of lottery advertising which shall comply with the following:
  a. All advertising shall include resources for responsible gaming information.
  b. No advertising may intentionally target specific groups or economic classes.
  c. No advertising may be misleading, deceptive, or present any lottery game as a means of relieving any person's financial or personal difficulties.
  d. No advertising may have the primary purpose of inducing persons to participate in the Lottery.

(3) To specify the number and value of prizes for winning tickets or shares in lottery games, including cash prizes, merchandise prizes, prizes consisting of deferred payments or annuities, and prizes of tickets or shares in the same lottery game or other lottery games.

(4) To specify the rules of lottery games and the method for determining winners of lottery games.

(5) To specify the retail sales price for tickets or shares for lottery games.

(6) To establish a system to claim prizes, including determining the time periods within which prizes must be claimed, to verify the validity of tickets or shares claimed to win prizes, and to effect payment of those prizes.

(7) To conduct a background investigation, including a criminal history record check, of applicants for the position of Director, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.

(8) To charge a fee of potential contractors and lottery contractors to not exceed the cost of the criminal record check of the potential contractors and lottery contractors.

(9) To specify the manner of distribution, dissemination, or sale of lottery tickets or shares to lottery game retailers or directly to the public.

(10) To determine the incentives, if any, for any lottery employees, lottery retailers, lottery contractors, or electronic computer terminal operators.

(11) To specify the authority, compensation, and role of the Director, and to specify the authority, selection, and role of the other employees of the Commission. All of the following apply to all employees of the Commission:
  a. No employee of the Commission may have a financial interest in any lottery potential contractor or lottery contractor, other than an interest as part of a mutual fund.

b. No employee of the Commission with decision-making authority shall participate in any decision involving the retailer or potential contractor with whom the employee has a financial interest.

c. No employee of the Commission who leaves the employment of the Commission may represent any lottery contractor, potential contractor, or retailer before the Commission for a period of one year following termination of employment with the Commission.

d. A background investigation shall be conducted on each applicant for employment with the Commission.

e. The Commission shall bond all employees with access to lottery funds or revenue or security.

(12) To approve and authorize the Director to enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter.

(13) Any other powers necessary for the Commission to carry out its responsibilities under this Chapter.

(b) Article 3D of Chapter 147 of the General Statutes shall not apply to the Commission. (2005-344, s. 1; 2005-276, s. 31.1(f); 2009-357, s. 1; 2009-570, s. 32(b), (c).)

Effect of Amendments. — Session Laws 2009-357, s. 1, effective July 27, 2009, in subdivision (a)(8), substituted "potential contractors and contractors" for "vendors" and "vendor," respectively; in subdivision (a)(10), substituted "retailers" for "vendors"; in subdivision (a)(11)a. and b., substituted "potential contractor" for "vendor"; and in subdivision (a)(11)c., substituted "contractor, potential contractor" for "vendor" near the middle.

Session Laws 2009-570, s. 32(b) and(c), effective August 28, 2009, substituted both uses of "potential contractors and lottery contractors" for "lottery potential contractors and contractors" in subdivision (a)(8); and inserted "lottery" in subdivision (a)(11)c.

§ 18C-115. Reports.

The Commission shall send quarterly and annual reports on the operations of the Commission to the Governor, State Treasurer, the Lottery Oversight Committee, and to the General Assembly. The reports shall include complete statements of lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds, including the occurrence of any audit. (2005-344, s. 1; 2006-225, s. 2.)

§ 18C-116. Audits.

The State Auditor shall conduct annual audits of all accounts and transactions of the Commission and any other special postaudits the State Auditor considers to be necessary. (2005-344, s. 1.)

§§ 18C-117 through 18C-119: Reserved for future codification purposes.

ARTICLE 3.

North Carolina State Lottery Director.

§ 18C-120. Selection of the Director; powers and duties.

(a) The Commission shall select a Director to operate and administer the Lottery and to serve as the Secretary of the Commission. Except as to the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, the Director shall be exempt from the State Personnel Act.

(b) The Director shall have the following powers and duties, under the supervision of the Commission:

(1) To provide for the reporting of payment of lottery game prizes to State and federal tax authorities and for the withholding of State and federal income taxes from lottery game prizes as provided in State and federal law.

(2) To conduct a background investigation, including a criminal history record check, of applicants for employment with the Commission, lottery retailers, and lottery potential contractors, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.

(3) To set the salaries of all Commission employees, subject to the approval of the Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.

(4) To enter into contracts with lottery retailers, lottery contractors, or lottery suppliers upon approval by the Commission.

(5) To provide for the security and accuracy in the operation and administration of the Commission and the Lottery, including examining the background of all prospective employees, lottery potential contractors, lottery contractors, and lottery retailers.

(6) To coordinate and collaborate with the appropriate law enforcement authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.

(7) To confer with the Commission on the operation and administration of the Lottery and make available for inspection by the Commission all books, records, files, documents, and other information of the Lottery.

(8) To study the operation and administration of other lotteries and to collect demographic and other information concerning the Lottery and make recommendations to improve the operation and administration of the Lottery to the Commission, to the Governor, and to the General Assembly.

(9) To provide monthly financial reports to the Commission of all lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds.

(10) To enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter and upon the approval of the Commission. (2005-344, s. 1; 2005-276, s. 31.1(g); 2009-357, s. 7.)

Effect of Amendments. — Session Laws 2009-357, s. 7, effective July 27, 2009, in subdivision (b)(2), inserted "potential" near the middle; in subdivision (b)(4), substituted "retailers, lottery contractors, or lottery suppliers" for "retailers and lottery contractors"; and in subdivision (b)(5), substituted "lottery potential contractors" for "lottery vendors" near the end.

§ 18C-121. Accountability; books and records.

The Director shall have made and kept books and records that accurately and completely reflect each day's transactions, including the distribution of tickets or shares to lottery game retailers, receipt of funds, prize claims, prizes paid directly by the Commission, expenses, and all other financial transactions involving lottery funds necessary to permit preparation of financial statements that conform with generally accepted accounting principles. (2005-344, s. 1; 2005-276, s. 31.1(h).)

§ 18C-122. Independent audits.

(a) Biennially, at the beginning of the calendar year, the Commission shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

(b) The portion of the security audit report containing the overall evaluation of the Commission and of lottery games in terms of each aspect of security shall be presented to the Commission, to the Governor, and to the General Assembly.

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, in addition to the audits required by G.S. 18C-116 and by subsection (a) of this section, beginning in 2010, the Commission shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly. (2005-344, s. 1; 2005-276, s. 31.1(i); 2009-357, s. 15.)

Effect of Amendments. — Session Laws 2009-357, s. 15, effective July 27, 2009, in subsection (a), inserted "Biennially" and substituted "the calendar" for "each calendar" at the beginning, and in subsection (d), inserted "in addition to the audits required by G.S. 18C-116 and by subsection (a) of this section, beginning in 2010" in the first sentence.

§§ 18C-123 through 18C-129: Reserved for future codification purposes.

Article 4.

Operation of Lottery.

§ 18C-130. Types of lottery games; lottery games and lottery advertising; certain disclosures and information to be provided.

(a) The Commission shall determine the types of lottery games that may be used in the Lottery. Games may include instant lotteries, online games, games played on computer terminals or other devices, and other games traditional to a lottery or that have been conducted by any other state government-operated lottery.

(b) In lottery games using tickets, each ticket in a particular game shall have printed on it a unique number distinguishing it from every other ticket in that lottery game and an abbreviated form of the game-play rules, including resources for responsible gaming information. In lottery games using tickets, each ticket may have printed on it a depiction of one or more cartoon characters, whose primary appeal is not to minors. In lottery games using tickets with preprinted winners, the overall estimated odds of winning prizes shall be printed on each ticket. No name or photograph of a current or former elected official shall appear on the tickets of any lottery game.

(c) In games using electronic computer terminals or other devices to play lottery games, no coins or currency shall be dispensed to players from those electronic computer terminals or devices.

(d) No games shall be based on the outcome of a particular sporting event or on the results of a series of sporting events.

(e) Lottery advertising shall be tastefully designed and presented in a manner to minimize the appeal of lottery games to minors. The use of cartoon characters or of false, misleading, or deceptive information in lottery advertising is prohibited. All advertising promoting the sale of lottery tickets or shares for a particular game shall include the actual or estimated overall odds of winning the game.

(f) The Commission shall make available a detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery game or the estimated odds of winning these prizes at the time that lottery game is offered for sale to the public.

(g) The Commission shall, in consultation with the Department of Health and Human Services, develop and provide information to the public about gambling addiction and treatment. (2005-344, s. 1; 2005-276, ss. 31.1(j), 31.1(j1); 2006-259, s. 8(a).)

§ 18C-131. Sales and sale price of tickets and shares; sales to minors prohibited.

(a) The Commission may sell tickets and shares directly to the public, contract with lottery game retailers to sell tickets and shares, or distribute tickets or shares through any other method authorized by the Commission.

(b) No ticket or share in a lottery game shall be sold or resold for more than the retail sales price established by the Commission.

(c) The minimum retail price of each ticket or share in any lottery game shall be fifty cents (50¢). The minimum retail price shall not apply to any discounts or promotions authorized by the Commission for a particular lottery game.

(d) It shall be unlawful for a person to sell a lottery ticket or share to a person under the age of 18 years. No person under the age of 18 years shall purchase a lottery ticket or share. A person who violates this subsection shall be guilty of a Class 1 misdemeanor.

(e) It shall be a defense for the person who sold a ticket or share in violation of subsection (d) of this section if the person does either of the following:

(1) Shows that the purchaser produced a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the purchaser to be at least 18 years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least 18 years old. (2005-344, s. 1; 2006-259, s. 8(b).)

§ 18C-132. Procedures for drawings and claiming prizes; payment of prizes; protection of information concerning certain prize winners.

(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a drawing among entries including second chance drawings where the value of the prize is five thousand dollars ($5,000) or more, or a drawing among finalists, all of the following conditions shall be met:

(1) The drawings shall be open to the public.

(2) The drawings shall be witnessed by an independent certified public accountant or by an auditor employed by a certified public accounting firm.

(3) Any equipment used in the drawings shall be inspected by the independent certified public accountant or auditor employed by a certified public accounting firm and an employee of the Commission both before and after the drawings.

(4) Audio and visual records of the drawings and inspections shall be made.

If a lottery game uses a drawing among entries for (i) a second chance drawing or (ii) any other promotion conducted by the lottery, where the value of the prize is less than five thousand dollars ($5,000) in value, the requirements of subdivisions (2) and (3) of this subsection do not apply.

(b) Prizes that remain unclaimed after the period set by the Commission for claiming the prizes shall not be considered abandoned property. If a valid claim is not made for a prize within the applicable period, the unclaimed prize money shall be handled in accordance with this Chapter.

(c) After the expiration of the claim period for prizes for each lottery game, the Commission shall make available a detailed tabulation of the total number of prizes of each prize denomination that was actually claimed and paid directly by the Commission.

(d) No prize shall be paid for a lottery ticket or share that is stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or recorded by the Commission by the applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with any additional specific rules and public or confidential validation and security tests appropriate to the particular game involved.

(e) No valid claim for a prize in any lottery game shall be paid more than once. The Director, Commission, and the State shall be discharged of all liability upon payment of a prize.

(f) Winners of less than six hundred dollars ($600.00) shall be permitted to claim prizes from any of the following:

(1) The same lottery game retailer who sold the winning ticket or share.

(2) Any other lottery retailer.

(3) The Commission.

(g) Winners of six hundred dollars ($600.00) or more shall claim prizes directly from the Commission.

(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid to a person designated pursuant to a court order. Any prize or portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the prize winner or as designated in the deceased prize winner's will, living trust, or other prepared legal instrument if a copy of the trust document or instrument has been filed with the Director, and no written notice of revocation has been received by the Director prior to the prize winner's death.

(i) No ticket or share in a lottery game shall be purchased by, and no prize shall be paid to, a member of the Commission, the Director, or employee of the Commission, or to any spouse, parent, or child living in the same household as a person disqualified by this subsection.

(j) No prize shall be paid to a person under the age of 18.

(k) If a prize winner submits to the Commission a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with that prize winner or a current and valid Address

Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, that prize winner's identifying information shall be treated as confidential information under G.S. 132-1.2 as long as the protective order remains in effect or the prize winner remains a certified program participant in the Address Confidentiality Program. That prize winner's identifying information shall be available for inspection by a law enforcement agency or by a person identified in a court order if inspection of the address by that person is directed by that court order.

(*l*) All prizes are subject to the State income tax. (2005-344, s. 1; 2005-276, s. 31.1(k); 2006-225, s. 4; 2009-357, ss. 8, 14.)

Effect of Amendments. — Session Laws 2009-357, ss. 8 and 14, effective July 27, 2009, in subsection (a), in the introductory language, inserted "including second chance drawings where the value of the prize is five thousand dollars ($5,000) or more"; in subdivision (a)(2), added "or by an auditor employed by a certified public accounting firm" at the end; in subdivision (a)(3), inserted "or auditor employed by a certified public accounting firm"; and added the last paragraph; in subsection (h), deleted "to the estate of a deceased prizewinner or" following "may be paid" in the second sentence, and added the last sentence.

§ 18C-133. Lottery game-play rules and winner validation procedures.

(a) By purchasing a ticket or share in a lottery game, a player agrees to abide by, and be bound by, the game-play rules adopted by the Commission that apply to any particular lottery game involved.

(b) All players acknowledge that the determination of whether the player is a winner is subject to the game-play rules and the winner validation procedures and confidential validation tests established by the Commission for the particular lottery game involved. (2005-344, s. 1.)

§ 18C-134. Setoff for debt collection against lottery prizes.

(a) Purpose. — The Commission must establish a debt set-off program by which lottery prize payments may be used to satisfy a debt owed or collected by a claimant agency that is at least fifty dollars ($50.00). The collection remedy under this section is in addition to and not in substitution for any other remedy available by law.

(b) Notification. — A claimant agency is automatically enrolled in the Commission's debt set-off program if it is enrolled in the Department of Revenue debt set-off program. To provide for more efficient operations, the Department of Revenue shall provide to the Commission on a periodic basis all updates to its debt set-off program as soon as practicable.

(c) Setoff. — The Commission must match the information submitted by the claimant agency with persons who are entitled to a State lottery prize payment in an amount of six hundred dollars ($600.00) or more. If there is a match, the Commission must set off the debt against the lottery winnings to which the debtor would otherwise be entitled. When there are multiple claims to be set off, the priority in claims to set off is the same as provided in G.S. 105A-12. The winnings that exceed the amount of the debt, if any, must be paid to that person. The Commission must mail the debtor written notice that the setoff has occurred and must transfer the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

(d) Collection Assistance Fee. — To recover the costs incurred by the Commission in collecting debts under this section, a collection assistance fee of five dollars ($5.00) may be imposed on each debt collected through setoff. The Commission must collect this fee as part of the debt and retain it. To recover the costs incurred by local agencies in submitting debts for collection under this section, a collection assistance fee of fifteen dollars ($15.00) may be imposed on each local agency debt collected through setoff. The Commission must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The collection assistance fees do not apply to child support debts. If the Commission is able to collect only part of a debt through setoff, the Commission's collection assistance fee has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt.

(e) Confidentiality. — Notwithstanding any confidentiality statute of a claimant agency, the exchange of information among the Commission, the Department of Revenue, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this section is lawful. The information an agency or organization obtains from the Commission in accordance with the exemption in this subsection may be used by the agency or organization only in the pursuit of its debt collection duties and practices.

(f) Definitions. — The definitions in G.S. 105A-2 apply in this section. (2005-344, s. 1; 2005-276, s. 31.1(k1); 2009-357, ss. 9, 10.)

Effect of Amendments. — Session Laws 2009-357, ss. 9 and 10, effective July 27, 2009, rewrote subsection (b), and in subsection (e), inserted "the Department of Revenue" in the first sentence.

§§ 18C-135 through 18C-139: Reserved for future codification purposes.

Article 5.

Lottery Game Retailers.

§ 18C-140. Contracting with lottery game retailers.

The Commission may contract with lottery game retailers to sell tickets or shares for lottery games upon such terms and conditions as it considers appropriate. The contract entered into between the Commission and the lottery game retailer shall be considered a permit for purposes of Chapter 18B of the General Statutes. No contract to act as a lottery game retailer is assignable or transferable. All contracts with lottery game retailers shall provide that the Director may terminate the contract if the lottery game retailer violates a provision of this Chapter. (2005-344, s. 1; 2005-276, s. 31.1(*l*).)

§ 18C-141. Selection of lottery game retailers.

(a) The Director shall recommend to the Commission those persons with whom to contract as lottery game retailers. To the extent practicable, the Director shall meet the minority participation goals under Article 8 of Chapter 143 of the General Statutes.

(b) The Director may not recommend contracting with any of the following:

(1) A natural person under 21 years of age. This minimum age shall not prohibit employees of a lottery game retailer who are under 21 years of age from selling lottery tickets or shares during their employment.

(2) A person who would be engaged exclusively in the business of selling lottery tickets or shares or operating electronic computer terminals or other devices solely for entertainment.

(3) A person who is not current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties owed to the State, excluding items under formal appeal under applicable statutes. Upon request of the Director, the Department of Revenue shall provide this information about a specific person to the Commission.

(4) A person who resides in the same household as a member of the Commission, the Director, or any other employee of the Commission.

(c) Upon approval of the Commission, the Director shall enter into a contract with the person to sell tickets or shares upon such terms and conditions as the Commission directs. (2005-344, s. 1; 2005-276, s. 31.1(m).)

§ 18C-142. Compensation for lottery game retailers.

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be seven percent (7%) of the face value of the tickets or shares sold for each lottery game. The Commission shall require submission of reports and remission of lottery revenues to the Commission on a timely basis. (2005-344, s. 1; 2005-276, s. 31.1(n); 2009-357, s. 11.)

Effect of Amendments. — Session Laws 2009-357, s. 11, effective July 27, 2009, substituted "face value" for "retail price" in the first sentence.

§ 18C-143. Responsibilities of lottery game retailers.

(a) A lottery game retailer shall comply with all provisions of this Article and the contract with the Commission.

(b) A lottery game retailer shall sell no lottery tickets or shares unless the retailer conspicuously displays a certificate of authority, signed by the Director, to sell lottery tickets or shares. The Commission shall issue a certificate of authority to each lottery game retailer for purposes of display for each retail outlet owned or operated by the lottery game retailer. No certificate is assignable or transferable.

(c) A lottery game retailer shall furnish an appropriate bond or letter of credit, if so requested by the Director. The Commission may authorize the Director to purchase blanket bonds covering the activities of any or all lottery game retailers.

(d) The Commission shall adopt rules to establish procedures governing how the lottery game retailers:

(1) Account for all tickets or shares in their custody, including tickets and shares sold.

(2) Account for the money collected from the sale of tickets and shares.

(3) Remit funds to the Commission, provided that all payments shall be in the form of electronic fund transfers or other recorded financial instruments as authorized by the Commission and approved by the Director.

(e) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, to any member or employee of the Commission, or to any member of the immediate family residing in the same household as one of these individuals.

(f) All lottery proceeds minus applicable retailer commissions are held in trust by lottery retailers until such time as they are received by the Commission. A lottery retailer shall have a fiduciary duty to preserve and account for lottery proceeds including any unsold tickets. (2005-344, s. 1; 2005-276, s. 31.1(o); 2009-357, s. 13.)

Effect of Amendments. — Session Laws 2009-357, s. 13, effective July 27, 2009, added subsection (f).

§§ 18C-144 through 18C-149: Reserved for future codification purposes.

Article 6.

Lottery Potential Contractors and Lottery Contractors.

§ 18C-150. Procurements.

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. (2005-344, s. 1.)

Editor's Note. — Session Laws 2009-357, s. 2, rewrote the Article 6 heading to read: "Lottery Potential Contractors and Lottery Contractors."

§ 18C-151. Contracts.

(a) Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of ninety thousand dollars ($90,000) or more may be awarded by the Commission only after the following have occurred:

(1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
  a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
  b. The time and place for opening of the proposals.
  c. A statement reserving to the Commission the right to reject any or all proposals.

(2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.

(3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.

(4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.

(5) The Commission may not award a contract to a lottery potential contractor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.

(6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery potential contractors.

(7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.

(8) The Commission shall award the contract to the responsible lottery potential contractor or lottery supplier who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor or lottery supplier with whom the Commission has previously contracted for the same purposes.

(c) Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:

(1) The potential contractor to whom the contract is to be awarded.

(2) Any parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded.

(3) All shareholders with a five percent (5%) or more interest in the potential contractor or parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded.

(4) All officers and directors of the potential contractor or parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery contractor, potential contractor, or lottery supplier may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals. (2005-344, s. 1; 2005-276, s. 31.1(p); 2006-259, s. 8(d); 2009-357, s. 3; 2009-570, s. 32(d).)

Effect of Amendments. — Session Laws 2009-357, s. 3, effective July 27, 2009, substituted "potential contractor" for "vendor" throughout the section; in subdivision (a)(6), substituted "potential contractors" for "vendors"; in subdivision (a)(8), substituted "potential contractor or lottery supplier" for "vendor"; and in subsection (f), substituted "contractor, potential contractor, or lottery supplier" for "vendor nor any applicant for a contract" near the beginning.

Session Laws 2009-570, s. 32(d), effective

August 28, 2009, substituted "No lottery contractor" for "No lottery system contractor" at the beginning of subsection (f).

§ 18C-152. Investigation of lottery potential contractors.

(a) Lottery potential contractors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures of information required to be disclosed under subsection (c) of this section by lottery potential contractors to ensure that the potential contractors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery potential contractors. Information shall be disclosed for the following:

(1) If the potential contractor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.

(2) If the potential contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.

(3) If the potential contractor is an association, the members, officers, and directors.

(4) If the potential contractor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(5) For any potential contractor, any person who can exercise control or authority, or both, on behalf of the potential contractor. For any potential contractor, any person who can exercise control or authority, or both, on behalf of the vendor. potential contractor.

(c) For purposes of this subsection, the term "potential contractor" shall include the potential contractor and each of the persons applicable under subsection (b) of this section. At a minimum, the potential contractor required to disclose information for a thorough background investigation under G.S. 18C-151 shall do all of the following:

(1) Disclose the potential contractor's name, phone number, and address.

(2) Disclose all the states and jurisdictions in which the potential contractor does business and the nature of the business for each state or jurisdiction.

(3) Disclose all the states and jurisdictions in which the potential contractor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.

(4) Disclose all the states and jurisdictions in which the potential contractor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.

(5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the potential contractor for any felony or any other criminal offense other than a minor traffic violation.

(6) Disclose the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the potential contractor.

(7) If at least twenty-five percent (25%) of the cost of a potential contractor's contract is subcontracted, the potential contractor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a potential contractor.

(8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.

(d) All documents compiled by the Director in conducting the investigation of the lottery potential contractors shall be held as confidential information under Chapter 132 of the General Statutes. (2005-344, s. 1; 2005-276, s. 31.1(q); 2009-357, s. 4.)

Effect of Amendments. — Session Laws 2009-357, s. 4, effective July 27, 2009, substituted "potential contractor" and "potential contractors" for "vendor" and "vendors," respectively, throughout the section.

§§ 18C-153 through 18C-159: Reserved for future codification purposes.

ARTICLE 7.

North Carolina State Lottery Fund.

§ 18C-160. North Carolina State Lottery Fund.

An enterprise fund, to be known as the North Carolina State Lottery Fund, is created within the State treasury. The North Carolina State Lottery Fund is appropriated to the Commission and may be expended without further action of the General Assembly for the purposes of operating the Commission and the lottery games. (2005-344, s. 1.)

CASE NOTES

State's lottery law was not a revenue bill, and, thus, its provisions such as G.S. 18C-110 and G.S. 18C-160 characterizing the state lottery commission as an independent, self-supporting, and revenue-raising agency were not enacted in violation of the requirements set forth in N.C. Const., Art. II, § 23. The law did not: (1) raise money on the credit of the State; (2) pledge the faith of the State directly or indirectly for the payment of any debt; or (3) impose any tax upon the people of the State, but rather, allowed citizens to participate in a voluntary activity that incidentally raised revenue. Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§ 18C-161. Types of income to the North Carolina State Lottery Fund.

The following revenues shall be deposited in the North Carolina State Lottery Fund:

(1) All proceeds from the sale of lottery tickets or shares.

(2) The funds for initial start-up costs provided by the State.
(3) All other funds credited or appropriated to the Commission from any source.
(4) Interest earned by the North Carolina State Lottery Fund. (2005-344, s. 1.)

CASE NOTES

Cited in Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§ 18C-162. Allocation of revenues.

(a) The Commission shall allocate revenues to the North Carolina State Lottery Fund in order to increase and maximize the available revenues for education purposes, and to the extent practicable, shall adhere to the following guidelines:

(1) At least fifty percent (50%) of the total annual revenues, as described in this Chapter, shall be returned to the public in the form of prizes.
(2) At least thirty-five percent (35%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.
(3) No more than eight percent (8%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery. Advertising expenses shall not exceed one percent (1%) of the total annual revenues.
(4) No more than seven percent (7%) of the face value of tickets or shares, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers.

(b) To the extent that the expenses of the Commission are less than eight percent (8%) of total annual revenues, the Commission may allocate any surplus funds:

(1) To increase prize payments; or
(2) To the benefit of the public purposes as described in this Chapter.

(c) Unclaimed prize money shall be held separate and apart from the other revenues and allocated as follows:

(1) Fifty percent (50%) to enhance prizes under subdivision (a)(1) of this section.
(2) Fifty percent (50%) to the Education Lottery Fund to be allocated in accordance with G.S. 18C-164(c). (2005-344, s. 1; 2005-276, s. 31.1(r); 2007-323, s. 5.2(c); 2009-357, s. 12.)

Effect of Amendments. — Session Laws 2009-357, s. 12, effective July 27, 2009, substituted "face value of tickets or shares" for "total annual revenues" in subdivision (a)(4).

CASE NOTES

State's lottery law was not a revenue bill and, thus, its provisions such as G.S. 18-162(a) allowing for allocation of total annual revenues were not enacted in violation of the requirements set forth in N.C. Const., Art. II, § 23. The law did not: (1) raise money on the credit of the State; (2) pledge the faith of the State directly or indirectly for the payment of any debt; or (3) impose any tax upon the people of the State, but, rather, allowed citizens to participate in a voluntary activity that incidentally raised revenue. Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§ 18C-163. Expenses of the Lottery.

Expenses of the Lottery may include any of the following:

(1) The costs incurred in operating and administering the Commission, including initial start-up costs.

(2) The costs resulting from any contracts entered into for the purchase or lease of goods or services required by the Commission.

(3) A transfer of one million dollars ($1,000,000) annually to the Department of Health and Human Services for gambling addiction education and treatment programs.

(4) The costs of supplies, materials, tickets, independent studies and audits, data transmission, advertising, promotion, incentives, public relations, communications, bonding for lottery game retailers, printing, and distribution of tickets and shares.

(5) The costs of reimbursing other governmental entities for services provided to the Commission.

(6) The costs for any other goods and services needed to accomplish the purposes of this Chapter. (2005-344, s. 1; 2005-276, s. 31.1(s).)

§ 18C-164. Transfer of net revenues.

(a) The funds remaining in the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund. The net revenues of the North Carolina State Lottery Fund shall be transferred four times a year to the Education Lottery Fund, which shall be created in the State treasury.

(b) From the Education Lottery Fund, the Commission shall transfer a sum equal to five percent (5%) of the net revenue of the prior year to the Education Lottery Reserve Fund. A special revenue fund for this purpose shall be established in the State treasury to be known as the Education Lottery Reserve Fund, and that fund shall be capped at fifty million dollars ($50,000,000). Monies in the Education Lottery Reserve Fund may be appropriated only as provided in subsection (e) of this section.

(c) The Commission shall distribute the remaining net revenue of the Education Lottery Fund, as follows, in the following manner:

(1) A sum equal to fifty percent (50%) to support reduction of class size in early grades to class size allotments not exceeding 1:18 in order to eliminate achievement gaps and to support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.

(2) A sum equal to forty percent (40%) to the Public School Building Capital Fund in accordance with G.S. 115C-546.2.

(3) A sum equal to ten percent (10%) to the State Educational Assistance Authority to fund college and university scholarships in accordance with Article 35A of Chapter 115C of the General Statutes.

(d) Of the sums transferred under subsection (c) of this section, the General Assembly shall appropriate the funds annually based upon estimates of lottery net revenue to the Education Lottery Fund provided by the Office of State Budget and Management and the Fiscal Research Division of the North Carolina General Assembly.

(e) If the actual net revenues are less than the appropriation for that given year, then the Governor may transfer from the Education Lottery Reserve Fund an amount sufficient to equal the appropriation by the General Assembly. If the monies available in the Education Lottery Reserve Fund are insufficient to reach a full appropriation, the Governor shall transfer monies in order of priority, to the following:

(1) To support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.
(2) To reduce class size.
(3) To provide financial aid for needy students to attend college.
(4) To the Public School Building Capital Fund to be spent in accordance with this section.

(f) If the actual net revenues exceed the amounts appropriated in that fiscal year, the excess net revenues shall remain in the Education Lottery Fund, and then be transferred as follows:

(1) Fifty percent (50%) to the Public School Building Capital Fund to be spent in accordance with this section.
(2) Fifty percent (50%) to the State Educational Assistance Authority to be spent in accordance with this section. (2005-344, s. 1; 2005-276, s. 31.1(t); 2006-259, s. 8(e).)

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 5.2(a), (b), provides: "(a) Pursuant to G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of three hundred fifty million dollars ($350,000,000) for the 2007-2008 fiscal year.

"(b) The appropriations made from the Education Lottery Fund pursuant to G.S. 18C-164(d) for the 2007-2008 fiscal year are as follows:

"(1) Class Size Reduction $ 90,364,291

"(2) Prekindergarten Program 84,635,709

"(3) Public School Building Capital Fund 140,000,000

"(4) Scholarships for Needy Students 35,000,000

"Total Appropriation $ 350,000,000"

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 5.2(a), provides: "Pursuant to G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of three hundred eighty-five million five hundred thousand dollars ($385,500,000) for the 2008-2009 fiscal year."

Session Laws 2008-107, s. 5.2(a1), as amended by Session Laws 2008-118, s. 2.1(a), provides: "Notwithstanding G.S. 18C-164(f), if (i) the actual net lottery revenues for the 2007-2008 fiscal year exceed the amounts appropriated in the 2007-2008 fiscal year, (ii) the actual net lottery revenues for the 2008-2009 fiscal year exceed the amounts appropriated in the 2008-2009 fiscal year, or (iii) both, the excess net revenue is also transferred from the State Lottery Fund to support appropriations made in this act for the 2008-2009 fiscal year."

Session Laws 2008-107, s. 5.2(c), provides: "Notwithstanding G.S. 18C-164(d), the following amounts are appropriated from the Education Lottery Fund for the 2008-2009 fiscal year:

"(1) Class Size Reduction	$127,864,291
"(2) Prekindergarten Program	84,635,709
"(3) Public School Building Capital Fund	154,200,000
"(4) Scholarships for Needy Students	38,550,000
"Total	$405,250,000"

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 5.2(a)-(d), as amended by Session Laws 2009-575, s. 3N, provides: "(a) Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of three hundred sixty-eight million seventy thousand two hundred eight dollars ($368,070,208) for the 2009-2010 fiscal year.

"(b) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2009-2010 fiscal year are as follows:

"Teachers in Early Grades	99,399,395
"Prekindergarten Program	84,635,709
"Public School Building Capital Fund	147,228,083
"Scholarships for Needy Students	36,807,021
"Total Appropriation	$368,070,208

"(c) Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2009-2010 fiscal year or the 2010-2011 fiscal year.

"(d) Notwithstanding G.S. 18C-164(f), if the actual net lottery revenues exceed the amounts appropriated in subsection (b) of this section, the excess net revenues shall be allocated on the basis of average daily membership to local school administrative units that did not qualify for funding for the 2009-2010 and 2010-2011 fiscal years pursuant to G.S. 115C-546.2(d)(2)."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

State's lottery law was not a revenue bill and, thus, its provisions such as G.S. 18-164(a) allowing for net revenues to be transferred periodically to the Education Lottery Fund, were not enacted in violation of the requirements set forth in N.C. Const., Art. II, § 23. The law did not: (1) raise money on the credit of the State; (2) pledge the faith of the State directly or indirectly for the payment of any debt; or (3) impose any tax upon the people of the State, but, rather, allowed citizens to participate in a voluntary activity that incidentally raised revenue. Heatherly v. State, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (2008).

§§ 18C-165 through 18C-169: Reserved for future codification purposes.

ARTICLE 8.

Miscellaneous.

§ 18C-170. Preemption of local regulation.

A county or municipality shall not enact any ordinance or regulation relating to the Lottery, and this Chapter preempts all existing county or municipal ordinances or regulations that would impose additional restrictions or requirements in the operation of the Lottery. To the extent that this Chapter conflicts with any local act, this Chapter prevails to the extent of the conflict. (2005-344, s. 1; 2005-276, s. 31.1(t1).)

§ 18C-171. Lawful activity.

Other than this Chapter, any other public or local law, ordinance, or regulation providing any penalty, restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares, or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this Chapter where the penalty, restriction, regulation, or prohibition applies only to the Lottery as operated by the North Carolina State Lottery Commission. (2005-344, s. 1; 2005-276, s. 31.1(u).)

§ 18C-172. Lottery Oversight Committee.

(a) Creation and Membership. — The Lottery Oversight Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of nine members appointed as provided below. In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Committee and shall strive to ensure racial, gender, and geographical diversity among the membership.

(1) Three members shall be appointed by the Speaker of the House of Representatives, at least one being an educator and at least one being a person trained or experienced in financial management.

(2) Three members shall be appointed by the President Pro Tempore of the Senate, at least one being an educator and at least one being a person trained or experienced in financial management.

(3) Three members shall be appointed by the Governor, at least one being an educator and at least one being a person trained or experienced in financial management.

(b) Terms. — Terms on the Committee are for three years and begin on January 1, except the terms of the initial members, which begin on appointment. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(c) Purpose and Powers. — The Committee shall:

(1) Review whether expenditures of the net revenues of the Lottery have been in accordance with Article 7 of this Chapter, and study ways to ensure that net proceeds from the Lottery will not be used to supplant education funding but to provide additional funding for education.

(2) Receive and review reports submitted to the General Assembly pursuant to Chapter 18C of the General Statutes.

(3) Study other Lottery matters as the Committee considers necessary to fulfill its mandate.

(d) Reports. — The Committee shall report its analysis and any findings and recommendations to the General Assembly by September 15 of each year. The Committee may make interim reports to the General Assembly regarding the expenditure of net Lottery revenues.

(e) Organization. — The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once a quarter upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

(f) Funding. — From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Committee. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5.

(g) Staff. — The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Director of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2006-225, s. 1.)

§ 18C-173. Limits on compensation increases.

Notwithstanding G.S. 18C-114(a)(11) and G.S. 18C-120(b)(3), the Lottery Commission, during any fiscal year, may not expend funds for merit and performance-based salary increases in excess of the funds that would have been expended had the Lottery Commission employees received the same across-the-board salary increases granted by the General Assembly to State employees subject to the State Personnel Act. These merit and performance-based salary increases may be awarded on an aggregated average basis according to rules adopted by the Lottery Commission. (2008-107, s. 26.12A.)

Editor's Note. — Session Laws 2008-107, s. 26.12A, enacted this section as G.S. 18C-120.173. It has been recodified as this section at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 19.

Offenses Against Public Morals.

Article 1.

Abatement of Nuisances.

Sec.
19-1. What are nuisances under this Chapter.
19-1.1. Definitions.
19-1.2. Types of nuisances.
19-1.3. Personal property as a nuisance; knowledge of nuisance.
19-1.4. Liability of successive owners for continuing nuisance.
19-1.5. Abatement does not preclude action.
19-2. [Repealed.]
19-2.1. Action for abatement; injunction.
19-2.2. Pleadings; jurisdiction; venue; application for preliminary injunction.
19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.
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19-2.5. Hearing on the preliminary injunction; issuance.
19-3. Priority of action; evidence.
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Sec.
19-6.1. Forfeiture of real property.
19-7. How order of abatement may be canceled.
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Article 2.

Civil Remedy for Sales of Harmful Materials to Minors.

19-9. Title.
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19-13. Commencement of civil proceeding.
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19-21. [Repealed.]

ARTICLE 1.

Abatement of Nuisances.

§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C.S., s. 3180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1998-46, s. 7; 1999-371, s. 1; 2007-178, s. 3.)

Cross References. — As to criminal actions for prostitution, see G.S. 14-203 et seq.; for gambling, see G.S. 14-289 et seq.; for unlawful sale of whiskey, see G.S. 18B-304. As to constitutionality of final judgment and order under this Article, see note to G.S. 19-5.

Legal Periodicals. — For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

For survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1088 (1981).

For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

For survey of 1981 constitutional law, see 60 N.C.L. Rev. 1272 (1982).

For comment discussing the constitutionality of North Carolina's nuisance abatement statute, see 61 N.C.L. Rev. 685 (1983).

For article, "Obscenity: The Justices' (Not So) New Robes," see 8 Campbell L. Rev. 387 (1986).

CASE NOTES

Constitutionality. — This Article is not facially unconstitutional. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

The North Carolina legislature chose the civil injunctive abatement route for control of pornography, a route with many hazards to successful negotiation, but, as now interpreted by the North Carolina Supreme Court, this Article effectively survives under U.S. Const., Amend. I and U.S. Const., Amend. XIV analysis. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

This and the following sections, providing for the abatement of public nuisances, are constitutional as a valid exercise of the police power of the State. Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938). See also Barker v. Palmer, 217 N.C. 519, 8 S.E.2d 610 (1940); State ex rel. Summrell v. Carolina-Virginia Racing Ass'n, 239 N.C. 591, 80 S.E.2d 638 (1954); State ex rel. Taylor v. Carolina Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).

Even if G.S. 19-5 unconstitutionally authorizes a judge to close a business after it has been declared a nuisance because of past exhibitions or sales of obscene material, a question not before the Supreme Court, G.S. 19-5 is severable from the remaining provisions of this Chapter and does not render this Chapter unconstitutional on its face. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

This section is not unconstitutionally vague or overbroad in describing one type of public nuisance as a place of business regularly operated or maintained for purposes of "prostitution," and as used in this section, "prostitution" includes the offering or receiving of the body, in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks or breasts. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

The North Carolina obscenity nuisance statute is directed to pictorial obscenity. It does not apply to written material, and it regulates commercial trafficking in obscene pictorial material only if the exhibition of obscene films is "a predominant and regular course of business" and if other obscene pictorial materials are "a principal or substantial part of the stock in trade." By such means, the legislature has confined its nuisance abatement authorization to theaters regularly showing pornographic films to adult audiences and to "adult bookstores" with coin-operated film projectors explicitly showing sexual activity or photographs or pictorial magazines showing similar activity, or two or three of them. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

All written material is excluded from the reach of this Article. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Article Inapplicable to Newsstand or Bookstore. — This Article clearly does not apply to the operator of a newsstand carrying materials usually to be found in newsstands and hotel and airline terminals, but who carries a magazine, an occasional issue of which might be challenged as obscene, nor does it apply to a bookstore, however salacious some of the written material in the books may be. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

A public nuisance under Chapter 19 can be enjoined regardless of the proximity of the nuisance to other structures. State ex rel. Onslow County v. Mercer, 128 N.C. App. 371, 496 S.E.2d 585 (1998).

Nuisance Need Not Be Nucleus of Crime. — It is not essential to the nuisance defined by this section that the acts of the customers which impart that quality to the premises and the business conducted there should be violations of the criminal law, either generally speaking or under the terms of the statute, nor is it necessary that the nuisance declared should have a nucleus of crime essential to its existence. While nuisance is frequently associated with criminal offenses, the law is not under the necessity of predicating one crime upon another to make valid its denunciation of an act which it denominates a nuisance. State v. Brown, 221 N.C. 301, 20 S.E.2d 286 (1942).

Establishing a Nuisance. — Based upon reading G.S. 19-1(a) and G.S. 19-1.2(6) together, in order to establish a nuisance, a plaintiff must show that a defendant has leased or used the defendant's property for the purpose of the illegal possession and sale of drugs, and as a means of showing the defendant's purpose in leasing or operating the building, the plaintiff may present evidence that the sale of controlled substances has occurred regularly; the defendant will then be permitted to offer evidence of a lawful business purpose in order to negate the inference that drug transactions are the sole purpose of the leasing or use of the property. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Full-Fledged Civil Trial Contemplated. — The basic statutory scheme is that one accused of operating a nuisance by the exhibition or sale of lewd materials should have a full-fledged civil trial during which he runs no risk of the imposition of a criminal penalty. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Injunctions against Actions under Color of Legislative Authority. — Ruling in State ex rel. Amick v. Lancaster, 228 N.C. 157, 44 S.E.2d 733 (1947), in which an action was brought under this Chapter to enjoin as a nuisance the operation of a liquor store by a town pursuant to Session Laws 1947, c. 862, that since the alcoholic control board was acting "under color of legislative authority" the remedy by action under this Chapter was inappropriate should be restricted to actions to enjoin the operations of a governmental board acting "under color of legislative authority," and should not be extended to actions to enjoin the operations of a private person, firm, association or corporation acting "under color of legislative authority." State ex rel. Taylor v. Carolina Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).

Betting on dog races under a pari-mutuel system having no other purpose than that of providing the facilities for placing bets, calculating odds and determining winnings, if any, constitutes gambling, and is subject to abatement by injunction as a statutory nuisance under this Chapter unless specifically permitted by a constitutional statute. State v. Carolina Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).

Race Track Operated under Unconstitutional Statute. — Where the statute under which defendant maintains and operates a race track for pari-mutuel betting is unconstitutional, a private citizen may maintain an action in the name of the State to enjoin the operation of such track as a public nuisance in a proceeding under this Chapter. State ex rel. Summrell v. Carolina-Virginia Racing Ass'n, 239 N.C. 591, 80 S.E.2d 638 (1954).

Establishment Facilitating Betting on Races. — The maintenance of an establishment with ticker tape and other paraphernalia to facilitate the making of wagers on horse races, in which offers to lay wagers were transmitted to race tracks outside the State, and through which wagers were paid off to successful betters, constituted a public nuisance. State v. Brown, 221 N.C. 301, 20 S.E.2d 286 (1942).

Opening of Safe on Premises Where Nuisance Maintained. — Where, in an action under this Chapter to abate a public nuisance on the sole ground that the premises were used for the unlawful sale of whiskey, etc., a safe found in the padlocked building was opened by the sheriff and no whiskey or other intoxicating beverages were found therein, the court could not thereafter require that the safe be reopened for the purpose of taking an inventory thereof, there being nothing to show the materiality of anything in the safe as bearing upon the question of abatement. Such inventory would be an invasion of the property rights of defendant without due process of law. State ex rel. Hooks v. Flowers, 247 N.C. 558, 101 S.E.2d 320 (1958).

Authority of Municipalities Concerning Nuisances. — Under the authority conferred upon a municipal corporation to adopt ordinances for the government of the corporation and to abate nuisances, no power is granted to enact that the permitting of prostitution by the owner or occupant of any house therein shall constitute such owner or occupant the keeper of a house of ill fame, nor to declare what shall be a bawdy house or a disorderly house. State v. Webber, 107 N.C. 962, 12 S.E. 598 (1890).

Admission of Evidence Held Error. — Where defendant was not charged with maintaining a nuisance, the admission of evidence tending to show the general reputation of defendant's premises was error. State v. Tessnear, 265 N.C. 319, 144 S.E.2d 43 (1965).

No Breach of Peace. — In city's nuisance action seeking to establish that 24 police trips to the landlords' property over the course of several years constituted a breach of the peace pursuant G.S. 19-1(b) and G.S. 19-1.1(1), seven of those police visits related to domestic incidents and one visit involving a search warrant did not constitute breaches of the peace, because there was no evidence that these events involved any threats to other citizens or disturbed the public order. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Nuisance Not Established. — City of Salisbury failed to establish that the landlords' property was a nuisance under G.S. 19-1.2 and G.S. 19-1(a), because the property was not used for the purpose of the illegal possession and sale of drugs, as confirmed drug activity had occurred on the property only three times since 2000. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Three instances that could have constituted breaches of the peace — two assaults and one disturbance in which shots were fired — occurring over a two-and-a-half-year period, did not constitute a nuisance under G.S. 19-1(b), because the instances did not meet the standard of repeated acts. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Applied in State ex rel. Amick v. Lancaster, 228 N.C. 157, 44 S.E.2d 733 (1947); State ex rel. Bowman v. Fipps, 266 N.C. 535, 146 S.E.2d 395 (1966); State ex rel. Jacobs v. Sherard, 36 N.C. App. 60, 243 S.E.2d 184 (1978).

Cited in State v. Alverson, 225 N.C. 29, 33 S.E.2d 135 (1945); State v. Murphy, 235 N.C. 503, 70 S.E.2d 498 (1952); State ex rel. Summrell v. Carolina-Virginia Racing Ass'n, 240 N.C. 614, 83 S.E.2d 501 (1954); State ex rel. Bowman v. Malloy, 264 N.C. 396, 141 S.E.2d 796 (1965); State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965); Animal Protection Soc'y of Durham, Inc. v. State, 95 N.C. App. 258, 382 S.E.2d 801 (1989); State ex rel. Rhodes v. Simpson, 325 N.C. 522, 385 S.E.2d 329 (1989); Moore v. City of Creedmoor, 120 N.C. App. 27, 460 S.E.2d 899 (1995).

§ 19-1.1. Definitions.

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

(1) "Breach of the peace" means repeated acts that disturb the public order including, but not limited to, homicide, assault, affray, communicating threats, unlawful possession of dangerous or deadly weapons, and discharging firearms.

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

  a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

  b. Which depicts patently offensive representations of:

    1. Ultimate sexual acts, normal or perverted, actual or simulated;

    2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;

    3. Masochism or sadism; or

    4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) "Lewdness" is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) "Matter" means a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:

a. Film or plate negative;

b. Film or plate positive;

c. Film designed to be projected on a screen for exhibition;

d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

e. Video tape, compact disc, digital video disc, or any other medium used to electronically reproduce images on a screen.

(6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(7) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(7a) "Preserving the status quo" as used in G.S. 19-2.3 means returning conditions to the last actual, peaceable, lawful, and noncontested status which preceded the pending controversy and not allow the nuisance to continue.

(7b) "Prostitution" means offering in any manner or receiving of the body in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks, or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification.

(8) "Publication" shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(9) "Sale of obscene or lewd matter" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

(10) "Sale" as the term relates to proscribed acts other than sale of obscene or lewd matter shall have the same meaning as the term is defined in Chapter 18B and Chapter 90 of the General Statutes prohibiting the illegal sale of alcoholic beverages and controlled substances respectively.

(11) "Used for profit" shall mean any use of real or personal property to produce income in any manner, including, but not limited to, any commercial or business activities, or selling, leasing, or otherwise providing goods and services for profit. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 2.)

Cross References. — As to the North Carolina Controlled Substances Act, see G.S. 90-86 et seq.

Editor's Note. — Subdivisions (1) and (1a) were renumbered as such at the direction of the Revisor of Statutes.

Legal Periodicals. — For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

For article, "Regulation of Pornography — The North Carolina Approach," see 21 Wake Forest L. Rev. 263 (1986).

CASE NOTES

No Breach of Peace. — In city's nuisance action seeking to establish that 24 police trips to the landlords' property over the course of several years constituted a breach of the peace pursuant G.S. 19-1(b) and G.S. 19-1.1(1), seven of those police visits related to domestic incidents and one visit involving a search warrant did not constitute breaches of the peace, because there was no evidence that these events involved any threats to other citizens or disturbed the public order. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Applied in Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

§ 19-1.2. Types of nuisances.

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;

(5) Any and every lewd publication possessed at a place which is a nuisance under this Article;

(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 3.)

CASE NOTES

In order for a bookstore to be a nuisance, the lewd publications must constitute a principal or substantial part of the stock in the trade. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Not every isolated obscene publication is a nuisance that can be abated under G.S. 19-5. First it must be found that the book or magazine is one of many, such that all together they make up a large part of the bookstore's inventory. Once this initial determination is made, however, each individual obscene publication is a nuisance, and any and every one of them can be abated. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Establishing a Nuisance. — Based upon reading G.S. 19-1(a) and G.S. 19-1.2(6) together, in order to establish a nuisance, a plaintiff must show that a defendant has leased or used the defendant's property for the purpose of the illegal possession and sale of drugs, and as a means of showing the defendant's purpose in leasing or operating the building, the plaintiff may present evidence that the sale of controlled substances has occurred regularly; the defendant will then be permitted to offer evidence of a lawful business purpose in order to negate the inference that drug transactions are the sole purpose of the leasing or use of the property. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Burden on State to Prove Obscenity. — The State is required to prove all the elements of obscenity found in subdivision (2) of this section in a nuisance action, including proof that the material as a whole lacks "serious literary, artistic, political, educational, or scientific value." State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Property Held Not Used for the Purpose of Illegal Possession and Sale of Drugs. — City of Salisbury failed to establish that the landlords' property was a nuisance under G.S. 19-1.2 and G.S. § 19-1(a), because the property was not used for the purpose of the illegal possession and sale of drugs, as confirmed drug activity had occurred on the property only three times since 2000. State ex rel. City of Salisbury v. Campbell, 169 N.C. App. 829, 610 S.E.2d 799, 2005 N.C. App. LEXIS 803 (2005).

Cited in State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980); Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;

(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 4.)

§ 19-1.4. Liability of successive owners for continuing nuisance.

After notice of a temporary restraining order, preliminary injunction, or permanent injunction, every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it. (1977, c. 819, s. 3.)

§ 19-1.5. Abatement does not preclude action.

The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. (1977, c. 819, s. 3.)

§ 19-2: Repealed by Session Laws 1977, c. 819, s. 4.

Cross References. — For present provisions covering the subject matter of the repealed section, see G.S. 19-2.1 to 19-2.5.

§ 19-2.1. Action for abatement; injunction.

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter. (1977, c. 819, s. 4; 1995, c. 528, s. 1; 1999-371, s. 5.)

Legal Periodicals. — For article, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

For comment on taxpayers' actions, see 13 Wake Forest L. Rev. 397 (1977).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1088 (1981).

For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

For survey of 1981 constitutional law, see 60 N.C.L. Rev. 1272 (1982).

For comment discussing the constitutionality of North Carolina's nuisance abatement statute, see 61 N.C.L. Rev. 685 (1983).

CASE NOTES

Editor's Note. *— Many of the annotations set out below are from cases decided under former G.S. 19-2.*

An action to abate a public nuisance by injunction or otherwise must be maintained in the name of the State, and this section designates with particularity those who may become relators and prosecute the cause in the name of the State. Dare County v. Mater, 235 N.C. 179, 69 S.E.2d 244 (1952).

County Commissioners May Not Prosecute Action in Name of County. — While the members of a county board of commissioners may, as individuals, become relators under this section, they may not prosecute this action in the name of the county. Dare County v. Mater, 235 N.C. 179, 69 S.E.2d 244 (1952).

Procedure Cannot Be Invoked against Alcoholic Control Board. — It was never intended that the procedure here invoked to abate a nuisance should be applied against the alcoholic control board set up under color of legislative authority, or against one who rents a building to such a board for the purpose of operating a liquor control store. State ex rel. Amick v. Lancaster, 228 N.C. 157, 44 S.E.2d 733 (1947).

Proceeding Must Be Based on Specific Act Denounced by § 19-1. — The proceeding by a citizen in the name of the State for injunction, the closing of a place of business and the seizure and sale of the personal property used therewith, must be based upon allegation and proof of one or more of the specific acts denounced by G.S. 19-1. State ex rel. Dickey v. Alverson, 225 N.C. 29, 33 S.E.2d 135 (1945).

Allegation of Direct Injury to Citizen Bringing Action Not Required. — While ordinarily a resident and citizen may not enjoin public officials from putting into effect the provisions of a legislative enactment on the ground that the act is unconstitutional unless he alleges and proves that he will suffer direct injury, such allegation is not necessary in an action in the name of the State under this section to enjoin the maintenance of a gambling nuisance. State ex rel. Summrell v. Carolina-Virginia Racing Ass'n, 239 N.C. 591, 80 S.E.2d 638 (1954).

Bond Requirement for Private Complainants is Constitutional. — The provision of this statute requiring a private citizen to post a bond, while the district attorney is not required to do so, is a valid distinction and does not thereby constitute arbitrary and capricious State action. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

Burden on State to Prove Obscenity. — The State is required to prove all the elements of obscenity found in G.S. 19-1.2(2) in a nuisance action, including proof that the material as a whole lacks "serious literary, artistic, political, educational, or scientific value." State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), (adopting opinion of 296 N.C. 251 by reference).

A public nuisance under Chapter 19 can be enjoined regardless of the proximity of the nuisance to other structures. State ex rel. Onslow County v. Mercer, 128 N.C. App. 371, 496 S.E.2d 585 (1998).

Evidence Supporting Abatement. — The evidence disclosed that defendant operated a tourist camp with filling station, dining room and dance hall in front, and cabins in the rear, that the camp was on highway in a thickly settled rural community, that whiskey and contraceptives were sold, that drunken men and women were seen nightly at the place, and seen to go in the cabins in pairs and stay for a short time, that the community was constantly awakened at night by loud and boisterous conduct and profanity, that fighting occurred between drunken men and women, with many of both sexes nude or indecently clad, and that the general reputation of the place was bad, is held amply sufficient to be submitted to the jury upon the issue of whether the place constituted a nuisance against public morals as defined by G.S. 19-1, and to support a judgment for its abatement in accordance with this section in an action brought by the solicitor (now district attorney) as relator. Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938).

Lease Is Made in Contemplation of Statute. — A lease contract will be held to have been made in contemplation of the statute in effect at the time of the execution of the lease, providing for the abatement of nuisance against public morals, and the lessor is subject to the rights of the State to padlock the premises in accordance with the statute if they are used in operating a nuisance as defined by the act. Barker v. Palmer, 217 N.C. 519, 8 S.E.2d 610 (1940).

Assistance by Private Counsel. — The State Constitution and G.S. 7A-61, 147-89 and 19-2.1 do not prohibit a district attorney from employing private counsel to assist in public nuisance actions. Whitfield v. Gilchrist, 126 N.C. App. 241, 485 S.E.2d 61 (1997), rev'd on other grounds, 348 N.C. 39, 497 S.E.2d 412 (1998).

Compensation for Attorney. — Section 19-8 is the proper source of compensation for an attorney representing a prevailing party in a public nuisance action, at least when the State has not expressly entered into a valid contract for such legal services. Whitfield v. Gilchrist, 348 N.C. 39, 497 S.E.2d 412 (1998).

The enactment of G.S. 19-8 indicates that the legislature contemplated only one noncontractural method of payment for attorneys who undertake to maintain, on behalf of anyone, a civil action to abate a nuisance as authorized by this section. Whitfield v. Gilchrist, 348 N.C. 39, 497 S.E.2d 412 (1998).

Cited in State ex rel. Jacobs v. Sherard, 36 N.C. App. 60, 243 S.E.2d 184 (1978); Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982); State v. Felts, 79 N.C. App. 205, 339 S.E.2d 99 (1986); Moore v. City of Creedmoor, 120 N.C. App. 27, 460 S.E.2d 899 (1995).

§ 19-2.2. Pleadings; jurisdiction; venue; application for preliminary injunction.

The action, provided for in this Chapter, shall be brought in the superior court of the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a preliminary injunction may be made to the court in which the action is filed which court shall grant a hearing within 10 days after the filing of said application. (1977, c. 819, s. 4.)

Legal Periodicals. — For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

CASE NOTES

A complaint in an action to abate a nuisance is sufficient if it denominates the type of nuisance sought to be abated and the conduct complained of is declared a nuisance under the statute. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

Cited in Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect. (1977, c. 819, s. 4; 1999-371, s. 6.)

Cross References. — As to constitutionality of final order and judgment under this Article, see note to G.S. 19-5.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1088 (1981).

For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

CASE NOTES

Temporary Restraining Order Does Not Operate as Prior Restraint. — The temporary restraining order authorized to be issued following the filing of the complaint and application for a preliminary injunction does not operate as a prior restraint on the distribution of particular publications and motion pictures presumptively protected by U.S. Const., Amend. I until an adversary hearing determines otherwise. Fehlhaber v. North Carolina, 445 F. Supp. 130 (E.D.N.C. 1978), rev'd on other grounds, 675 F.2d 1365 (4th Cir. 1982).

The right of the public under U.S. Const., Amend. I to receive information is unaffected by the temporary restraining order, and the parallel right of the distributors to dispense the information is not discernibly chilled. Fehlhaber v. North Carolina, 445 F. Supp. 130 (E.D.N.C. 1978), rev'd on other grounds, 675 F.2d 1365 (4th Cir. 1982).

Construction of Inventory and Full Accounting Provisions of Section. — Reading this section as a whole, the apparent purpose of the inventory and accounting provision is to provide the factual basis for the determination of whether the business deals in obscene items as a "substantial" portion of its stock in trade, in the case of bookstores, or "in the regular course of business," in the case of theaters. Such purpose could be accomplished by a full accounting that included no more than the date, item purchased, and amount paid. Because a statute may be declared unconstitutional on its face only if it offers no plausible constitutional interpretation, the court adopts this construction of the full accounting provision and not a construction which would require the recording of individual customers who purchase books or attend movies. Fehlhaber v. North Carolina, 445 F. Supp. 130 (E.D.N.C. 1978), rev'd on other grounds, 675 F.2d 1365 (4th Cir. 1982).

The requirement of an inventory by an officer does not require a warrantless search in contravention of U.S. Const., Amend. IV, since the clearest reading of the provision is that it directs an officer to enter an establishment that is open to the public and from that vantage point, make an inventory of items of personal property in plain view. Fehlhaber v. North Carolina, 445 F. Supp. 130 (E.D.N.C. 1978), rev'd on other grounds, 675 F.2d 1365 (4th Cir. 1982).

Order Does Not Take Private Property Without Due Process or Equal Protection. — The fact that the district attorney, upon filing a nuisance complaint, can obtain a temporary restraining order pursuant to this section without posting bond and without notice to the persons restrained does not constitute the taking of private property without due process or equal protection since the statute does not authorize the seizure or destruction of property but merely preserves the status quo until a hearing can be held; the statute establishes a procedure for the owner of the property in question immediately to challenge the validity of the temporary restraining order and places the burden of its continuance on the district attorney; and the procedure mandated by G.S. 1A-1, Rule 65(b) applies to the issuance of the temporary restraining order. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

Error to Find Defendant in Contempt for Acts Not Forbidden. — It was error to find defendant in contempt for removing a copy of a temporary restraining order and padlocks from premises described as a public nuisance where temporary restraining order did not specifically forbid defendant from doing those acts. State ex rel. Zimmerman v. Mason, 54 N.C. App. 155, 282 S.E.2d 518 (1981).

Cited in Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

§ 19-2.4. Notice of hearing on preliminary injunction; consolidation.

A copy of the complaint, together with a notice of the time and place of the hearing of the application for a preliminary injunction, shall be served upon the defendant at least five days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in G.S. 19-2.3 in the case of a temporary restraining order. If the hearing is then continued at the instance of any defendant, the temporary restraining order may be continued as a matter of course until the hearing.

Before or after the commencement of the hearing of an application for a preliminary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction; provided, however, the defendant shall be entitled to a jury trial if requested. (1977, c. 819, s. 4.)

Legal Periodicals. — For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

For comment discussing the constitutionality of North Carolina's nuisance abatement statute, see 61 N.C.L. Rev. 685 (1983).

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No Preliminary Restraints of Indefinite Duration Authorized. — This section and G.S. 19-2.5 together authorize a preliminary injunction, but the second paragraph of this section authorizes the court to advance the trial on the merits to the hearing on the motion. In any event, under G.S. 19-3, the trial on the merits must be held at the next term of court following the filing of the complaint. It is given priority over all other civil cases, except election contests or other injunction cases. Thus, no preliminary restraints of indefinite duration are authorized. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

§ 19-2.5. Hearing on the preliminary injunction; issuance.

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. The court may, in its discretion, order the closure of the property pending trial on the merits. (1977, c. 819, s. 4; 1999-371, s. 7.)

Legal Periodicals. — For note on control of obscenity through enforcement of a nuisance statute, see 4 Campbell L. Rev. 139 (1981).

CASE NOTES

No Preliminary Restraints of Indefinite Duration Authorized. — Section 19-2.4 and this section together authorize a preliminary injunction, but the second paragraph of G.S. 19-2.4 authorizes the court to advance the trial on the merits to the hearing on the motion. In any event, under G.S. 19-3, the trial on the merits must be held at the next term of court following the filing of the complaint. It is given priority over all other civil cases, except election contests or other injunction cases. Thus, no preliminary restraints of indefinite duration are authorized. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Cited in State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980).

§ 19-3. Priority of action; evidence.

(a) The action provided for in this Chapter shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions.

(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

(c) At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. (Pub. Loc. 1913, c. 761, s. 27; 1919, c. 288; C.S., s. 3182; 1971, c. 528, s. 6; 1973, c. 47, s. 2; 1977, c. 819, s. 5; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 8.)

Cross References. — As to admissibility of certain evidence relative to keeping disorderly houses in criminal proceedings, see § 14-188.

CASE NOTES

Admission of General Reputation Evidence Is Constitutional. — The admission into evidence of the general reputation of the building or place allegedly constituting a nuisance does not permit an unconstitutional taking of property in a trial by rumor, hearsay, and innuendo, and does not deny defendants of their right of cross-examination. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

And Such Evidence Is Competent in Action to Abate Nuisance. — Evidence of the general reputation of the place in question is competent in an action to abate a public nuisance. Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938).

But Section Does Not Apply Where Defendant Not Charged With Maintaining Nuisance. — This section, which makes evidence of the general reputation of the place admissible for the purpose of proving a nuisance, is not applicable where the defendant is not charged with maintaining a nuisance. State v. Tessnear, 265 N.C. 319, 144 S.E.2d 43 (1965).

Hence, evidence of the general reputation of defendant's premises is inadmissible in prosecutions for liquor-law violations involving a charge of unlawful sale or possession of intoxicants at particular premises. State v. Tessnear, 265 N.C. 319, 144 S.E.2d 43 (1965).

No Preliminary Restraints of Indefinite Duration Authorized. — Sections 19-2.4 and 19-2.5 together authorize a preliminary injunction, but the second paragraph of G.S. 19-2.4 authorizes the court to advance the trial on the merits to the hearing on the motion. In any event, under this section the trial on the merits must be held at the next term of court following the filing of the complaint. It is given priority over all other civil cases, except election contests or other injunction cases. Thus, no preliminary restraints of indefinite duration are authorized. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Applied in State ex rel. Gilchrist v. Cogdill, 74 N.C. App. 133, 327 S.E.2d 647 (1985).

Cited in State ex rel. Jacobs v. Sherard, 36 N.C. App. 60, 243 S.E.2d 184 (1978).

§ 19-4. Violation of injunction; punishment.

In case of the violation of any injunction granted under the provisions of this Chapter, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred ($200.00) or more than one thousand dollars ($1,000), or by imprisonment in the county jail not less than three or more than six months, or by both fine and imprisonment. (Pub. Loc. 1913, c. 761, s. 28; 1919, c. 288; C.S., s. 3183.)

Legal Periodicals. — For survey of 1981 constitutional law, see 60 N.C.L. Rev. 1272 (1982).

For comment discussing the constitutionality of North Carolina's nuisance abatement statute, see 61 N.C.L. Rev. 685 (1983).

CASE NOTES

Constitutionality. — Since neither a fine nor imprisonment can be imposed upon a defendant in moral nuisance proceedings unless and until it has been judicially determined that he has sold or exhibited obscene matter, the "prior restraint" imposed by the moral nuisance statutes, if any, is neither more onerous nor more objectionable than a criminal sanction meted out after the fact of sale or exhibition and, therefore, is constitutionally permissible. Chateau X, Inc. v. State ex rel. Andrews, 302 N.C. 321, 275 S.E.2d 443 (1981).

There can be no finding of contempt until the State has proven beyond a reasonable doubt that defendant subsequently has operated a prohibited nuisance, a commercial enterprise in which at least a substantial part of the business is the exhibition or sale of obscene material. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Judicial Determination Prerequisite to Imposition of Punishment. — No penalty, whether it be a fine or imprisonment, can be imposed upon a defendant for distribution of obscene matter unless and until it has been judicially determined that he has sold or exhibited the obscene matter. Chateau X, Inc. v. State ex rel. Andrews, 302 N.C. 321, 275 S.E.2d 443 (1981).

Plenary Proceedings for Contempt. — The plenary proceedings provided for in G.S. 5A-15 apply to contempt actions following an injunction under this Chapter. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), (adopting opinion of 296 N.C. 251 by reference).

While under constraint of the injunction, defendant is perfectly free to operate a legitimate business. He may sell pictorial and other magazines, and so long as he stocks the kind of magazines usually to be found on news and magazine stands, he need not be concerned that an occasional item might be found to be obscene. Moreover, he need not refuse to carry a certain magazine, for even if a particular issue of that magazine should be found obscene in another context, he would not be guilty of a violation of the injunction, with more explicitly defined restraints and with the limitation that his business may not be found to be a violating nuisance unless a substantial part of his inventory is prohibited material. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Cited in Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938).

§ 19-5. Content of final judgment and order.

If the existence of a nuisance is admitted or established in an action as provided for in this Chapter an order of abatement shall be entered as a part of the judgment in the case, which judgment and order shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere within the jurisdiction of this State. Lewd matter, illegal alcoholic beverages, gambling paraphernalia, or substances proscribed under the North Carolina Controlled Substances Act shall be destroyed and not be sold.

Such order may also require the effectual closing of the place against its use thereafter for the purpose of conducting any such nuisance.

The provisions of this Article, relating to the closing of a place with respect to obscene or lewd matter, shall not apply in any order of the court to any theatre or motion picture establishment which does not, in the regular, predominant, and ordinary course of its business, show or demonstrate lewd films or motion pictures, as defined in this Article, but any such establishment may be permanently enjoined from showing such film judicially determined to be obscene hereunder and such film or motion picture shall be destroyed and all proceeds and moneys received therefrom, after the issuance of a preliminary injunction, forfeited. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C.S., s. 3184; 1977, c. 819, s. 6; 1981, c. 412, s. 4; c. 747, s. 66.)

Legal Periodicals. — For survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

CASE NOTES

Constitutionality. — Even if this section unconstitutionally authorizes a judge to close a business after it has been declared a nuisance because of past exhibitions or sales of obscene material, a question not before the Supreme Court, it is severable from the remaining provisions of this Chapter and does not render this Chapter unconstitutional on its face. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Restraining Order Held Not Unconstitutional Prior Restraint. — An order restraining defendants from selling or exhibiting obscene matter not actually before the court was not an unconstitutional prior restraint of their right of free speech in light of the unquestionably obscene nature of all of defendants' films and magazines before the court, the fact that the defendants were adequately warned of which materials they could not sell or exhibit by the specifically drawn order, and the procedural safeguards afforded the defendants. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

The plenary proceedings provided for in G.S. 5A-15 apply to contempt actions following a Chapter 19 injunction. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Not every isolated obscene publication is a nuisance that can be abated under this section. First it must be found that the book or magazine is one of many, such that all together they make up a large part of the bookstore's inventory. Once this initial determination is made, however, each individual obscene publication is a nuisance, and any and every one of them can be abated. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

The legislature intended for judges to have some discretion in abating nuisances. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Discretion of Judge in Formulating Abatement Order. — Once a business has been established as a nuisance, the judge is not required to enjoin the future distribution of any and all obscene matter as defined by G.S. 19-1.1(2). The trial judge necessarily must be given some discretion in formulating his abatement order. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

If an abatement order issues, the trial court has some discretion to define what conduct is prohibited, as long as it falls within constitutional and statutory mandates, and he has the duty to specifically warn the defendant of the prohibited conduct. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

Injunction Upheld. — Where trial judge enjoined only the sale of "illegal lewd matter," which is correctly and completely defined in G.S. 19-1.2(2), but did not specifically state that the sexual conduct being depicted be "patently offensive," this minor omission was not fatal to the injunction. State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979), vacated, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980), on remand, 302 N.C. 321, 275 S.E.2d 443 (1981), adopting opinion of 296 N.C. 251 by reference.

A defendant under an injunction need have no fear if he opens a traditional magazine stand in a hotel. However, if he reopens an "adult bookstore" and fills it with explicit displays of sexual activity altogether comparable with the materials for the sale of which he has already been found to be in violation of the law, the fact that different couples were performing does not detract from the adequacy of his forewarning. Fehlhaber v. North Carolina, 675 F.2d 1365 (4th Cir. 1982).

Cited in State ex rel. Jacobs v. Sherard, 36 N.C. App. 60, 243 S.E.2d 184 (1978); State ex rel. Brown v. Smith, 74 N.C. App. 599, 328 S.E.2d 810 (1985).

§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C.S., s. 3185; 1977, c. 819, s. 7; 1981, c. 412, s. 4; c. 747, s. 66; 1998-215, s. 106; 1999-371, s. 9.)

Local Modification. — McDowell: 1959, c. 590, s. 3.

Legal Periodicals. — For note and comment on asset forfeiture, see 19 Campbell L. Rev. 527 (1997).

CASE NOTES

Fees awarded to the plaintiff's attorneys and to the court-appointed referee in cases under G.S. 19-1 et seq. are a matter within the court's discretion, and, absent an abuse of that discretion, such amounts will not be disturbed on appeal. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

Applied in State ex rel. Bowman v. Fipps, 266 N.C. 535, 146 S.E.2d 395 (1966).

Cited in Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938); State ex rel. Taylor v. Carolina Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).

§ 19-6.1. Forfeiture of real property.

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners. (1995, c. 528, s. 2; 1999-371, s. 10; 2007-178, s. 4.)

§ 19-7. How order of abatement may be canceled.

If the owner appears and pays all cost of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk of the superior court, conditioned that he will immediately abate said nuisance, and prevent the same from being established or kept within a period of one year thereafter, the court may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as same may relate to said property; and if the proceeding be a civil action, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. (Pub. Loc. 1913, c. 761, s. 31; 1919, c. 288; C.S., s. 3186.)

CASE NOTES

Cited in Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938); State ex rel. Taylor v. Carolina Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).

§ 19-8. Costs.

The prevailing party shall be entitled to his costs. The court shall tax as part of the costs in any action brought hereunder such fee for the attorney prosecuting or defending the action or proceedings as may in the court's discretion be reasonable remuneration for the services performed by such attorney. (Pub. Loc. 1913, c. 761, s. 32; 1919, c. 288; C.S., s. 3187; 1977, c. 819, s. 8.)

Local Modification. — McDowell: 1959, c. 590, s. 4.

CASE NOTES

Intent of Legislature. — The enactment of this section indicates that the legislature contemplated only one noncontractural method of payment for attorneys who undertake to maintain, on behalf of anyone, a civil action to abate a nuisance as authorized by G.S. 19-2.1. Whitfield v. Gilchrist, 348 N.C. 39, 497 S.E.2d 412 (1998).

Proper Source of Compensation. — This section is the proper source of compensation for an attorney representing a prevailing party in a public nuisance action, at least when the State has not expressly entered into a valid contract for such legal services. Whitfield v. Gilchrist, 348 N.C. 39, 497 S.E.2d 412 (1998).

Fees Discretionary. — The allowance of a fee is a matter in the discretion of the trial judge. State ex rel. Bowman v. Fipps, 266 N.C. 535, 146 S.E.2d 395 (1966).

Fees awarded to the plaintiff's attorneys and to the court-appointed referee in cases under G.S. 19-1 et seq. are a matter within the court's discretion, and, absent an abuse of that discretion, such amounts will not be disturbed on appeal. State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980), cert. denied, 301 N.C. 720, 274 S.E.2d 233 (1981).

Cited in Carpenter v. Boyles, 213 N.C. 432, 196 S.E. 850 (1938); State v. Murphy, 235 N.C. 503, 70 S.E.2d 498 (1952).

§ 19-8.1. Immunity.

The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, provided that such projectionist, usher, or ticket taker: (i) Has no financial interest in the place wherein he is so employed, and (ii) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under this Chapter, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. (1977, c. 819, s. 9.)

§ 19-8.2. Right of entry.

Authorized representatives of the Commission for Public Health, any local health department or the Department of Health and Human Services, upon presenting appropriate credentials to the owner, operator, or agent in charge of a place described in G.S. 19-1.2, are authorized to enter without delay and at any reasonable time any such place in order to inspect and investigate during the regular hours of operation of such place. (1977, c. 819, s. 9; 1997-443, s. 11A.118(a); 2007-182, s. 2.)

§ 19-8.3. Severability.

If any section, subsection, sentence, or clause of this Article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this Article. It is hereby declared that this Article would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences or clauses might be adjudged to be unconstitutional, or for any other reason invalid. (1977, c. 819, s. 10.)

CASE NOTES

Cited in State ex rel. Andrews v. Chateau X, Inc., 296 N.C. 251, 250 S.E.2d 603 (1979).

ARTICLE 2.

Civil Remedy for Sales of Harmful Materials to Minors.

§ 19-9. Title.

This Article shall be known and cited as the North Carolina Law on the Protection of Minors from Harmful Materials. (1969, c. 1215, s. 1.)

Cross References. — As to obscene literature and exhibitions, see §§ 14-190.1 through 14-190.8.

Legal Periodicals. — For comment on requirement and techniques for holding adversary hearing prior to seizure of obscene material, see 48 N.C.L. Rev. 830 (1970).

For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

§ 19-10. Purposes.

The purposes of this Article are to provide district attorneys with a speedy civil remedy for obtaining a judicial determination of the character and contents of publications, and with an effective power to enjoin promptly the sale of harmful materials to minors. (1969, c. 1215, s. 1; 1971, c. 528, s. 7; 1973, c. 47, s. 2.)

§ 19-11. Public policy.

The public policy of this State requires that all proceedings prescribed in this Article shall be examined, heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech. (1969, c. 1215, s. 1.)

§ 19-12. Definitions.

As used within this Article, the following definitions shall apply:

(1) "Harmful Material".—
  a. Any picture, photograph, drawing, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse, and which is harmful to minors, or
  b. Any book, pamphlet, magazine, or printed matter however reproduced which contains any matter enumerated in subparagraph a of this subdivision or which contains explicit or detailed verbal descriptions or accounts of sexual excitement, sexual conduct or sadomasochistic abuse, and which, taken as a whole, is harmful to minors.

(2) "Harmful to minors". — That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
  a. Predominantly appeals to the prurient, shameful or morbid interest of minors, and
  b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable materials for minors, and

c. Is utterly without redeeming social importance for minors.

(3) "Knowledge of the Minor's Age".—

a. Knowledge or information that the person is a minor, or

b. Reason to know, or a belief or ground for belief which warrants further inspection or inquiry as to, the age of the minor.

(4) "Knowledge of the Nature of the Material".—

a. Knowledge of the character and content of any material described herein, or

b. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to this Article, or is the subject of a pending proceeding instituted pursuant to this Article.

(5) "Minor".— Any person under the age of 18 years.

(6) "Nudity".— The showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(7) "Person".— Any individual, partnership, firm, association, corporation or other legal entity.

(8) "Sadomasochistic abuse".— Flagellation or torture by or upon a person clad in undergarments, a mask or a bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(9) "Sexual conduct".— Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

(10) "Sexual excitement".— The condition of human male or female genitals when in a state of sexual stimulation or arousal. (1969, c. 1215, s. 1.)

§ 19-13. Commencement of civil proceeding.

(a) Whenever the district attorney for any prosecutorial district has reasonable cause to believe that any person is engaged in selling, distributing or disseminating in any manner harmful material to minors or may become engaged in selling, distributing or disseminating in any manner harmful material to minors, the district attorney for the prosecutorial district in which such material is so offered for sale shall institute an action in the district court for that district for adjudication of the question of whether such material is harmful to minors.

(b) The provisions of the Rules of Civil Procedure and all existing and future amendments of said Rules shall apply to all proceedings herein, except as otherwise provided in this Article. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 73.)

Cross References. — For Rules of Civil Procedure, see G.S. 1A-1.

Legal Periodicals. — For comment on requirement and techniques for holding adversary hearing prior to seizure of obscene material, see 48 N.C.L. Rev. 830 (1970).

§ 19-14. Filing and form of complaint.

The action authorized by this Article shall be commenced by the filing of a complaint to which shall be attached, as an exhibit, a true copy of the allegedly harmful material. The complaint shall:

(1) Be directed against such material by name, description, volume, and issue, as appropriate;
(2) Allege that such material is harmful to minors;
(3) Designate as respondents, and list the names and all known addresses of any person in this State preparing, selling, offering, commercially distributing or disseminating in any manner such material to minors, or possessing such material with the apparent intent to offer to sell or commercially distribute or disseminate in any manner such material to minors;
(4) Seek an adjudication that such material is harmful to minors; and
(5) Seek a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or disseminating in any manner such material to minors or from permitting minors to inspect such material. (1969, c. 1215, s. 1.)

CASE NOTES

Applied in David v. Ferguson, 153 N.C. App. 482, 571 S.E.2d 230, 2002 N.C. App. LEXIS 1176 (2002).

§ 19-15. Examination by the court; probable cause; service of summons.

(a) Upon the filing of a complaint pursuant to this Article, the district attorney shall present the same, together with attached exhibits, as soon as practicable to the court for its examination and reading.

(b) If, after such examination and reading, the court finds no probable cause to believe such material to be harmful to minors, the court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action.

(c) If, after such examination and reading, the court finds probable cause to believe such material to be harmful to minors, the court shall enter an order to that effect whereupon it shall be the responsibility of the district attorney promptly to cause the clerk of the superior court to issue summonses together with copies of said order and said complaint as are needed for the service of the same upon respondents. Service of such summons, order and complaint shall be made upon each respondent thereto in any manner provided by law for the service of civil process. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2.)

§ 19-16. Appearance and answer; default judgment.

(a) On or before the return date specified in the summons issued pursuant to this Article, or within 15 days after the service of such summons, or within 15 days after receiving actual notice of the issuance of such summons, the author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or distribution or disseminating in any manner, or any person in this State preparing, selling, offering, exhibiting or commercially distributing, or disseminating in any manner or possessing with intent to sell, offer or commercially distribute or exhibit or disseminate in any manner the material attached as an exhibit to the endorsed complaint, may appear and may intervene as a respondent and file an answer.

(b) If, after service of summons has been effected upon all respondents, no person appears and files an answer on or before the return date specified in the summons, the court may forthwith adjudge whether the material so exhibited to the endorsed complaint is harmful to minors and enter an appropriate final judgment. (1969, c. 1215, s. 1.)

§ 19-17. Trial.

(a) Upon the expiration of the time for filing answers by all respondents, but not later than the return date specified in the summons, the court shall, upon its own motion, or upon the application of any party who has appeared and filed an answer, set a date for the trial of the issues joined.

(b) Any respondent named in the complaint, or any person who becomes a respondent by virtue of intervention pursuant to this Article, shall be entitled to a trial of the issues within one day after joinder of issue. A decision shall be rendered by the court or jury, as the case may be, within two days of the conclusion of the trial.

(c) Every person appearing and answering as a respondent shall be entitled, upon request, to a trial of any issue by a jury. If a jury is not requested by any such respondent, the issues shall be tried by the court without a jury. (1969, c. 1215, s. 1.)

§ 19-18. Judgment; limitation to district.

(a) In the event that the court or jury, as the case may be, fails to find the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment accordingly and shall dismiss the complaint.

(b) In the event that the court or jury, as the case may be, finds the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or giving away such material to minors or from permitting minors to inspect such material.

(c) No interlocutory order, judgment, or subsequent order of enforcement thereof, entered pursuant to the provisions of this Article, shall be of any force and effect outside the district court district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other district court district. (1969, c. 1215, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 74.)

§ 19-19. Injunctions.

(a) If the court finds probable cause to believe the exhibited material to be harmful to minors, and so enters an order, the court may, upon the motion of the district attorney, issue a temporary restraining order against any respondent prohibiting him from offering, selling, commercially distributing or disseminating in any manner such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that one or more of the respondents are engaged in the sale, distribution or dissemination of harmful material to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon.

(b) Every temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its own terms within such time after entry, not to exceed three days, as the court fixes unless within the time so fixed the respondent against whom the order is directed consents that it may be extended for a longer period.

(c) In the event that a temporary restraining order is granted without notice, a motion for a preliminary injunction shall be set down for hearing within two days after the granting of such order and shall take precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the district attorney shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the restraining order.

(d) No preliminary injunction shall be issued without at least two days' notice to the respondents. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2.)

CASE NOTES

A public nuisance under Chapter 19 can be enjoined regardless of the proximity of the nuisance to other structures. State ex rel. Onslow County v. Mercer, 128 N.C. App. 371, 496 S.E.2d 585 (1998).

§ 19-20. Contempt; defenses; extradition.

(a) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice by personal service or otherwise of any restraining order or injunction entered pursuant to this Article, and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction after notice and hearing shall be sentenced as provided by law.

(b) No person shall be guilty of contempt pursuant to this section:

(1) For any sale, distribution or dissemination to a minor where such person had reasonable cause to believe that the minor involved was 18 years old or more, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more;

(2) For any sale, distribution or dissemination where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor's parent or guardian;

(3) Where such person is a bona fide school, museum or public library or is acting in his capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(c) In the event that any person found guilty of contempt pursuant to this section cannot be found within this State, the executive authority of this State shall, unless such person shall have appealed from the judgment of contempt and such appeal has not been finally determined, demand his extradition from the executive authority of the state in which such person may be found, pursuant to the law of this State. (1969, c. 1215, s. 1.)

§ 19-21: Repealed by Session Laws 1971, c. 528, s. 9.

Chapter 19A.

Protection of Animals.

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ARTICLE 1.

Civil Remedy for Protection of Animals.

§ 19A-1. Definitions.

The following definitions apply in this Article:

(1) The term "animals" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.

(2) The terms "cruelty" and "cruel treatment" include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

(3) The term "person" has the same meaning as in G.S. 12-3. (1969, c. 831; 1979, c. 808, s. 2; 1995, c. 509, s. 19; 2003-208, s. 1.)

Editor's Note. — Session Laws 2003-208, s. 2(a), provides: "The General Statutes Commission, in consultation with the Department of Agriculture and Consumer Services, may study the need to regulate the unlimited breeding of dogs and cats and the animal cruelty resulting from the operations commonly referred to as 'puppy mills'."

Session Laws 2003-208, s. 2(b), provides: "The General Statutes Commission may make an interim report to the 2003 General Assembly, Regular Session 2004, and shall make its final report to the 2005 General Assembly."

CASE NOTES

Subject Matter Jurisdiction. — Trial court and appellate court, under G.S. 19A-1(2), had subject matter jurisdiction over an animal right organization's action against a private agency to the extent the organization's complaint generally alleged an action for unjustifiable pain, suffering, or death to animals based on the agency's immediate euthanization of cats. Justice for Animals, Inc. v. Lenoir County SPCA, Inc., 168 N.C. App. 298, 607 S.E.2d 317, 2005 N.C. App. LEXIS 254 (2005).

Trial Court's Findings and Conclusions. — Trial court's involuntary dismissal of an animal rights organization's lawsuit against a private agency was reversed and remanded for the trial court to make proper findings under G.S. 19A-1(2) of the North Carolina Protection of Animals Statutes, to determine whether the agency's testing of cats and euthanization practices constituted unjustifiable pain, suffering, or death. Justice for Animals, Inc. v. Lenoir County SPCA, Inc., 168 N.C. App. 298, 607 S.E.2d 317, 2005 N.C. App. LEXIS 254 (2005).

"Person." — G.S. 19A-1 and G.S. 19A-2 express the General Assembly's intent that the broadest category of persons or organizations be deemed "[a] real party in interest" when contesting cruelty to animals; thus, animal welfare advocates who filed an action challenging an animal control facility's euthanasia procedures and record-keeping were "aggrieved persons" entitled to proceed under G.S. 130A-24 where, under G.S. 19A-1, the General Assembly viewed "persons" such as the advocates to be real parties in interest for the purpose of litigation in court and where the claims concerned the enforcement of rules adopted by the local board of health. Justice for Animals, Inc. v. Robeson County, 164 N.C. App. 366, 595 S.E.2d 773, 2004 N.C. App. LEXIS 813 (2004).

Real Person in Interest. — Animal welfare agency had standing to assert that an injunction and temporary custody order should be entered against the animal owners for the animal owners' alleged neglect and abuse of their animals despite the claim that the animal welfare agency had not suffered a legal injury itself; the North Carolina Constitution abolished the distinction between actions at law and suits in equity, leaving only one court to enforce such rights, and the legislature expressed the intent that the broadest category of persons or organizations be deemed a "real party in interest" when contesting cruelty to animals. Animal Legal Def. Fund v. Woodley, 181 N.C. App. 594, 640 S.E.2d 777, 2007 N.C. App. LEXIS 254 (2007), appeal dismissed, cert. denied, 361 N.C. 690, 652 S.E.2d 254 (2007), Animal Legal Def. Fund v. Woodley, 181 N.C. App. 594, 640 S.E.2d 777, 2007 N.C. App. LEXIS 254 (2007).

§ 19A-1.1. Exemptions.

This Article shall not apply to the following:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(3) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

(4) Activities conducted for lawful veterinary purposes.

(5) The lawful destruction of any animal for the purposes of protecting the public, other animals, or the public health.

(6) Lawful activities for sport. (2003-208, s. 1.)

CASE NOTES

Cited in Justice for Animals, Inc. v. Lenoir County SPCA, Inc., 168 N.C. App. 298, 607 S.E.2d 317, 2005 N.C. App. LEXIS 254 (2005).

§ 19A-2. Purpose.

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any person even though the person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831; 1995, c. 509, s. 20; 2003-208, s. 1.)

CASE NOTES

Subject Matter Jurisdiction. — Trial court had subject matter jurisdiction pursuant to G.S. 19A-2 over an animal rights organization's claim against a private agency to the extent the organization sought an injunction against the agency by alleging the cruel treatment of animals, as defined in G.S. 19A-1. Justice for Animals, Inc. v. Lenoir County SPCA, Inc., 168 N.C. App. 298, 607 S.E.2d 317, 2005 N.C. App. LEXIS 254 (2005).

Real Party in Interest. — G.S. 19A-1 and G.S. 19A-2 express the General Assembly's intent that the broadest category of persons or organizations be deemed "[a] real party in interest" when contesting cruelty to animals; thus, animal welfare advocates who filed an action challenging an animal control facility's euthanasia procedures and record-keeping were "aggrieved persons" entitled to proceed under G.S. 130A-24 where, under G.S. 19A-1, the General Assembly viewed "persons" such as the advocates to be real parties in interest for the purpose of litigation in court and where the claims concerned the enforcement of rules adopted by the local board of health. Justice for Animals, Inc. v. Robeson County, 164 N.C. App. 366, 595 S.E.2d 773, 2004 N.C. App. LEXIS 813 (2004).

§ 19A-3. Preliminary injunction; care of animal pending hearing on the merits.

(a) Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, as a matter of discretion, issue a preliminary injunction in accordance with the procedures set forth in G.S. 1A-1, Rule 65. Every such preliminary injunction, if the plaintiff so requests, may give the plaintiff the right to provide suitable care for the animal. If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the plaintiff to take possession of the animal as custodian.

(b) The plaintiff as custodian may employ a veterinarian to provide necessary medical care for the animal without any additional court order. Prior to taking such action, the plaintiff as custodian shall consult with, or attempt to consult with, the defendant in the action, but the plaintiff as custodian may authorize such care without the defendant's consent. Notwithstanding the provisions of this subsection, the plaintiff as custodian may not have an animal euthanized without written consent of the defendant or a court order that authorizes euthanasia upon the court's finding that the animal is suffering due to terminal illness or terminal injury.

(c) The plaintiff as custodian may place an animal with a foster care provider. The foster care provider shall return the animal to the plaintiff as custodian on demand. (1969, c. 831; 1971, c. 528, s. 10; 1979, c. 808, s. 3; 2003-208, s. 1; 2006-113, s. 1.1.)

CASE NOTES

Verification Requirement. — Trial court did not lack subject matter jurisdiction to consider the animal welfare agency's complaint, and to enter a permanent injunction and temporary custody order; the animal owners could not show that a requirement existed that the animal welfare agency's complaint be verified, as the statute that the animal owners cited to, G.S. 19A-3, involved preliminary injunctions not permanent injunctions; G.S. 19A-4, involving permanent injunctions, did not contain verification-language requirement, and verification of a complaint was not a condition for issuance of an injunction pursuant to G.S. 1A-1-65. Animal Legal Def. Fund v. Woodley, 181 N.C. App. 594, 640 S.E.2d 777, 2007 N.C. App. LEXIS 254 (2007), appeal dismissed, cert. denied, 361 N.C. 690, 652 S.E.2d 254 (2007), Animal Legal Def. Fund v. Woodley, 181 N.C. App. 594, 640 S.E.2d 777, 2007 N.C. App. LEXIS 254 (2007).

§ 19A-4. Permanent injunction.

(a) In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as the court deems appropriate, including a permanent injunction and dismissal of the action along with dissolution of any preliminary injunction that had been issued.

(b) If the plaintiff prevails, the court in its discretion may include the costs of food, water, shelter, and care, including medical care, provided to the animal, less any amounts deposited by the defendant under G.S. 19A-70, as part of the costs allowed to the plaintiff under G.S. 6-18. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner. For good cause shown, the court may also enjoin the defendant from acquiring new animals for a specified period of time or limit the number of animals the defendant may own or possess during a specified period of time.

(c) If the final judgment entitles the defendant to regain possession of the animal, the custodian shall return the animal, including taking any necessary steps to retrieve the animal from a foster care provider.

(d) The court shall consider and may provide for custody and care of the animal until the time to appeal expires or all appeals have been exhausted. (1969, c. 831; 1971, c. 528, s. 10; 1979, c. 808, s. 4; 2003-208, s. 1; 2006-113, s. 1.2.)

CASE NOTES

Verification Requirement. — Trial court did not lack subject matter jurisdiction to consider the animal welfare agency's complaint, and to enter a permanent injunction and temporary custody order; the animal owners could not show that a requirement existed that the animal welfare agency's complaint be verified, as the statute that the animal owners cited to, G.S. 19A-3, involved preliminary injunctions not permanent injunctions; G.S. 19A-4, involving permanent injunctions, did not contain verification-language requirement, and verification of a complaint was not a condition for issuance of an injunction pursuant to G.S. 1A-1-65. Animal Legal Def. Fund v. Woodley, 181 N.C. App. 594, 640 S.E.2d 777, 2007 N.C. App. LEXIS 254 (2007), appeal dismissed, cert. denied, 361 N.C. 690, 652 S.E.2d 254 (2007), Animal Legal Def. Fund v. Woodley, 181 N.C. App. 594, 640 S.E.2d 777, 2007 N.C. App. LEXIS 254 (2007).

Cited in Justice for Animals, Inc. v. Lenoir County SPCA, Inc., 168 N.C. App. 298, 607 S.E.2d 317, 2005 N.C. App. LEXIS 254 (2005).

§§ 19A-5 through 19A-9: Reserved for future codification purposes.

ARTICLE 2.

Protection of Black Bears.

§ 19A-10. Unlawful to buy, sell or enclose (except as provided) black bear.

Except as otherwise provided in applicable statutes, it shall be unlawful for any person to buy or sell black bears or for any person, firm or corporation to possess or keep any black bear (*Ursus americanus*) in any enclosure, pen, cage, or other place or means of captivity except as hereinafter provided. (1975, c. 56, s. 1.)

Local Modification. — Carteret: 1977, c. 565.

Cross References. — As to captivity license required for wild bears, see G.S. 113-272.5.

CASE NOTES

Purpose of Section. — The purpose of this section is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976), cert. denied, 430 U.S. 965, 97 S. Ct. 1645, 52 L. Ed. 2d 356 (1977).

§ 19A-11. Inapplicable to bona fide zoos, etc.

The provisions of this Article shall not apply to bona fide zoos which are operated by federal, State, or local governmental agencies, or to educational institutions in which black bears are kept or exhibited as part of a bona fide course of training or research in the natural sciences, or to black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission. (1975, c. 56, s. 2.)

CASE NOTES

Purpose of Section. — The purpose of this section is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976), cert. denied, 430 U.S. 965, 97 S. Ct. 1645, 52 L. Ed. 2d 356 (1977).

Constitutionality. — There is a rational basis for excepting bona fide zoos operated by governmental agencies from the provisions of the act so as to preclude a claim that the act denies plaintiff equal protection of the laws. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976), cert. denied, 430 U.S. 965, 97 S. Ct. 1645, 52 L. Ed. 2d 356 (1977).

§ 19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture.

Any person, firm or corporation in possession of a black bear on July 1, 1975, under an existing permit issued by the Wildlife Resources Commission, where the conditions under which such black bear is held are in violation of this Article, may immediately surrender such black bear and such permit to the Wildlife Resources Commission which shall compensate such person, firm or corporation in the amount actually paid for such bear not to exceed the sum of one hundred dollars ($100.00) for any one bear. In lieu of surrendering such black bear and such permit, any such person, firm or corporation may give immediately written notice to the Wildlife Resources Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a natural habitat will be submitted to the Commission for approval within 30 days thereafter. In the event such plans and specifications are not submitted within the time thus limited, or they are disapproved by the Commission, or the facilities are not completed in accordance therewith within 60 days after approval by the Commission, continued possession of a black bear by such person, firm or corporation after any of such events shall constitute a violation of the provisions of this Article, and any such black bear shall be forfeited to the Wildlife Resources Commission without compensation. (1975, c. 56, s. 3.)

CASE NOTES

Purpose of Section. — The purpose of this section is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976), cert. denied, 430 U.S. 965, 97 S. Ct. 1645, 52 L. Ed. 2d 356 (1977).

§ 19A-13. Violation of Article.

Violation of the provisions of this Article shall constitute a Class 2 misdemeanor. (1975, c. 56, s. 4; 1993, c. 539, s. 314; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Cited in Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678 (1976).

§ 19A-14. Enforcement of Article.

Law-enforcement officers of the Wildlife Resources Commission and all other peace officers are authorized and empowered to enforce the provisions of this Article. (1975, c. 56, s. 5.)

CASE NOTES

Cited in Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678 (1976).

§§ 19A-15 through 19A-19: Reserved for future codification purposes.

ARTICLE 3.

Animal Welfare Act.

§ 19A-20. Title of Article.

This Article may be cited as the Animal Welfare Act. (1977, 2nd Sess., c. 1217, s. 1.)

§ 19A-21. Purposes.

The purposes of this Article are (i) to protect the owners of dogs and cats from the theft of such pets; (ii) to prevent the sale or use of stolen pets; (iii) to insure that animals, as items of commerce, are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, buying, or selling them for such use; (iv) to insure that animals confined in pet shops, kennels, animal shelters and auction markets are provided humane care and treatment; (v) to prohibit the sale, trade or adoption of those animals which show physical signs of infection, communicable disease, or congenital abnormalities, unless veterinary care is assured subsequent to sale, trade or adoption. (1977, 2nd Sess., c. 1217, s. 2.)

§ 19A-22. Animal Welfare Section in Animal Health Division of Department of Agriculture and Consumer Services created; Director.

There is hereby created within the Animal Health Division of the North Carolina Department of Agriculture and Consumer Services, a new section thereof, to be known as the Animal Welfare Section of said division.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said section whose duties and authority shall be determined by the Commissioner subject to the approval of the Board of Agriculture and subject to the provisions of this Article. (1977, 2nd Sess., c. 1217, s. 3; 1997-261, s. 1.)

§ 19A-23. Definitions.

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Adequate feed" means the provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the

species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foodstuff shall be served in a sanitized receptacle, dish, or container.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any domestic dog (Canis familiaris), or domestic cat (Felis domestica).

(5) "Animal shelter" means a facility which is used to house or contain seized, stray, homeless, quarantined, abandoned or unwanted animals and which is under contract with, owned, operated, or maintained by a county, city, town, or other municipality, or by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, rehabilitation, or humane treatment of animals.

(5a) "Boarding kennel" means a facility or establishment which regularly offers to the public the service of boarding dogs or cats or both for a fee. Such a facility or establishment may, in addition to providing shelter, food and water, offer grooming or other services for dogs and/or cats.

(6) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(7) "Dealer" means any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility; provided, however, that an individual who breeds and raises on his own premises no more than the offspring of five canine or feline females per year, unless bred and raised specifically for research purposes shall not be considered to be a dealer for the purposes of this Article.

(8) "Director" means the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services.

(9) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.

(10) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(11) "Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

(12) "Pet shop" means a person or establishment that acquires for the purposes of resale animals bred by others whether as owner, agent, or on consignment, and that sells, trades or offers to sell or trade such animals to the general public at retail or wholesale.

(13) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage compartment or hutch.

(14) "Public auction" means any place or location where dogs or cats are sold at auction to the highest bidder regardless of whether such dogs or cats are offered as individuals, as a group, or by weight.

(15) "Research facility" means any place, laboratory, or institution at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

(16) "Sanitize" means to make physically clean and to remove and destroy to a practical minimum, agents injurious to health. (1977, 2nd Sess., c. 1217, s. 4; 1979, c. 734, s. 1; 1987, c. 827, s. 61; 1997-261, s. 2; 2005-276, s. 11.5(a).)

§ 19A-24. Powers of Board of Agriculture.

(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process.

(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture may adopt rules on the euthanasia of animals for:

(1) Written and practical examinations for persons who perform euthanasia.

(2) Issuance of certification to persons who have successfully completed both training and examinations to become a euthanasia technician.

(3) Recertification of euthanasia technicians on a periodic basis.

(4) Standards and procedures for the approval of persons who conduct training of euthanasia technicians.

(5) Approval of materials for use in euthanasia technician training.

(6) Minimum certification criteria for persons seeking to become euthanasia technicians including, but not limited to: age; previous related experience; criminal record; and other qualifications that are related to an applicant's fitness to perform euthanasia.

(7) Denial, suspension, or revocation of certification of euthanasia technicians who either violate any provision of the Animal Welfare Act pursuant to Article 3 of Chapter 19A of the General Statutes or otherwise become ineligible for certification.

(8) Provision of the names of persons who perform euthanasia at animal shelters and for the animal shelter to notify the Department when those persons are no longer affiliated, employed, or serving as a volunteer with the shelter.

(9) Certified euthanasia technicians to notify the Department when they are no longer employed by or are serving as a volunteer at an animal shelter.

(10) The duties, responsibilities, and standards of conduct for certified euthanasia technicians. (1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62; 2004-199, s. 12; 2005-276, s. 11.5(b); 2005-345, s. 22; 2008-198, s. 2(a).)

Editor's Note. — Session Laws 2008-198, s. 2(b), provides: "It is the intention of the General Assembly that the authorization to adopt rules governing euthanasia of animals set out in subsection (b) of G.S. 19A-24, as enacted by subsection (a) of this section, constitute sufficient statutory authority to support the adoption of 02 NCAC 52J.0401 through 02 NCAC 52J.0420, 02 NCAC 52J.0501 and 02 NCAC 52J.0502, 02 NCAC 52J.0602 through 02 NCAC 52J.0610, 02 NCAC 52J.0701 through 02 NCAC 52J.0705, and 02 NCAC 52J.0801 through 02 NCAC 52J.0803, as adopted by the Board of Agriculture on 13 February 2008."

Session Laws 2008-198, s. 12 provides, in part: "Section 2 of this act is retroactive to 1 November 2007."

Effect of Amendments. — Session Laws 2008-198, s. 2(a), effective November 1, 2007, designated the previously existing provisions as subsection (a); and added subsection (b).

§ 19A-25. Employees; investigations; right of entry.

For the enforcement of the provisions of this Article, the Director is authorized, subject to the approval of the Commissioner to appoint employees as are necessary in order to carry out and enforce the provisions of this Article, and to assign them interchangeably with other employees of the Animal Health Division. The Director shall cause the investigation of all reports of violations of the provisions of this Article, and the rules adopted pursuant to the provisions hereof; provided further, that if any person shall deny the Director or his representative admittance to his property, either person shall be entitled to secure from any superior court judge a court order granting such admittance. (1977, 2nd Sess., c. 1217, s. 6; 1987, c. 827, s. 63.)

§ 19A-26. Certificate of registration required for animal shelter.

No person shall operate an animal shelter unless a certificate of registration for such animal shelter shall have been granted by the Director. Application for such certificate shall be made in the manner provided by the Director. No fee shall be required for such application or certificate. Certificates of registration shall be valid for a period of one year or until suspended or revoked and may be renewed for like periods upon application in the manner provided. (1977, 2nd Sess., c. 1217, s. 7; 1987, c. 827, s. 64.)

§ 19A-27. License required for operation of pet shop.

No person shall operate a pet shop unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license shall be for the fiscal year and the license fee shall be fifty dollars ($50.00) for each license period or part thereof beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 8; 1987, c. 827, s. 65; 1989, c. 544, s. 17.)

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be fifty dollars ($50.00) for each license period or part thereof beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 9; 1987, c. 827, s. 65; 1989, c. 544, s. 18.)

§ 19A-29. License required for dealer.

No person shall be a dealer unless a license to deal shall have been granted by the Director to such person. Application for such license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be fifty dollars ($50.00) for each license period or part thereof, beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 10; 1987, c. 827, s. 66; 1989, c. 544, s. 19.)

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

(1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;

(2) Willful disregard or violation of this Article or any rules issued pursuant thereto;

(3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

(4) Allowing one's license under this Article to be used by an unlicensed person;

(5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;

(6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;

(7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;

(8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-31. License not transferable; change in management, etc., of business or operation.

A license is not transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator, as the case may be, whether it be an individual, firm, partnership, corporation, or other entity shall have 10 days from such sale or transfer to secure a new license from the Director to operate said business. A licensee shall promptly notify the Director of any change in the name, address, management, or substantial control of his business or operation. (1977, 2nd Sess., c. 1217, s. 12.)

§ 19A-32. Procedure for review of Director's decisions.

A denial, suspension, or revocation of a certificate or license under this Article shall be made in accordance with Chapter 150B of the General Statutes. (1977, 2nd Sess., c. 1217, s. 13; 1987, c. 827, s. 68.)

§ 19A-33. Penalty for operation of pet shop, kennel or auction without license.

Operation of a pet shop, kennel, or public auction without a currently valid license shall constitute a Class 3 misdemeanor subject only to a penalty of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00), and each day of operation shall constitute a separate offense. (1977, 2nd Sess., c. 1217, s. 14; 1993, c. 539, s. 315; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 19A-34. Penalty for acting as dealer without license; disposition of animals in custody of unlicensed dealer.

Acting as a dealer in animals as defined in this Article without a currently valid dealer's license shall constitute a Class 2 misdemeanor. Continued illegal operation after conviction shall constitute a separate offense. Animals found in possession or custody of an unlicensed dealer shall be subject to immediate seizure and impoundment and upon conviction of such unlicensed dealer shall become subject to sale or euthanasia in the discretion of the Director. (1977, 2nd Sess., c. 1217, s. 15; 1993, c. 539, s. 316; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 19A-35. Penalty for failure to adequately care for animals; disposition of animals.

Failure of any person licensed or registered under this Article to adequately house, feed, and water animals in his possession or custody shall constitute a Class 3 misdemeanor, and such person shall be subject to a fine of not less than five dollars ($5.00) per animal or more than a total of one thousand dollars ($1,000). Such animals shall be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director and such failure shall also constitute grounds for revocation of license after public hearing. (1977, 2nd Sess., c. 1217, s. 16; 1999-408, s. 4.)

§ 19A-36. Penalty for violation of Article by dog warden.

Violation of any provision of this Article which relates to the seizing, impoundment, and custody of an animal by a dog warden shall constitute a Class 3 misdemeanor and the person convicted thereof shall be subject to a fine of not less than fifty dollars ($50.00) and not more than one hundred dollars ($100.00), and each animal handled in violation shall constitute a separate offense. (1977, 2nd Sess., c. 1217, s. 17; 1993, c. 539, s. 317; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 19A-37. Application of Article.

This Article shall not apply to a place or establishment which is operated under the immediate supervision of a duly licensed veterinarian as a hospital where animals are harbored, boarded, and cared for incidental to the treatment, prevention, or alleviation of disease processes during the routine practice of the profession of veterinary medicine. This Article shall not apply to any dealer, pet shop, public auction, commercial kennel or research facility during the period such dealer or research facility is in the possession of a valid license or registration granted by the Secretary of Agriculture pursuant to Title 7, Chapter 54, of the United States Code. This Article shall not apply to any individual who occasionally boards an animal on a noncommercial basis, although such individual may receive nominal sums to cover the cost of such boarding. (1977, 2nd Sess., c. 1217, s. 18; 1987, c. 827, s. 69.)

§ 19A-38. Use of license fees.

All license fees collected shall be used in enforcing and administering this Article. (1977, 2nd Sess., c. 1217, s. 19.)

§ 19A-39. Article inapplicable to establishments for training hunting dogs.

Nothing in this Article shall apply to those kennels or establishments operated primarily for the purpose of boarding or training hunting dogs. (1977, 2nd Sess., c. 1217, s. 21; 1979, c. 734, s. 2.)

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

§ 19A-41. Legal representation by the Attorney General.

It shall be the duty of the Attorney General to represent the Commissioner of Agriculture and the Department of Agriculture and Consumer Services, or to designate some member of his staff to represent the Commissioner and the Department, in all actions or proceedings in connection with this Article. (2005-276, s. 11.5(c).)

§§ 19A-42 through 19A-44: Reserved for future codification purposes.

ARTICLE 4.

Animal Cruelty Investigators.

§ 19A-45. Appointment of animal cruelty investigators; term of office; removal; badge; oath; bond.

(a) The board of county commissioners is authorized to appoint one or more animal cruelty investigators to serve without any compensation or other employee benefits in his county. In making these appointments, the board may consider persons nominated by any society incorporated under North Carolina law for the prevention of cruelty to animals. Prior to making any such appointment, the board of county commissioners is authorized to enter into an agreement whereby any necessary expenses of caring for seized animals not collectable pursuant to G.S. 19A-47 may be paid by the animal cruelty investigator or by any society incorporated under North Carolina law for the prevention of cruelty to animals that is willing to bear such expense.

(b) Animal cruelty investigators shall serve a one-year term subject to removal for cause by the board of county commissioners. Animal cruelty investigators shall, while in the performance of their official duties, wear in plain view a badge of a design approved by the board identifying them as animal cruelty investigators, and provided at no cost to the county.

(c) Animal cruelty investigators shall take and subscribe the oath of office required of public officials. The oath shall be filed with the clerk of superior court. Animal cruelty investigators shall not be required to post any bond.

(d) Upon approval by the board of county commissioners, the animal cruelty investigator or investigators may be reimbursed for all necessary and actual expenses, to be paid by the county. (1979, c. 808, s. 1.)

§ 19A-46. Powers; magistrate's order; execution of order; petition; notice to owner.

(a) Whenever any animal is being cruelly treated as defined in G.S. 19A-1(2), an animal cruelty investigator may file with a magistrate a sworn complaint requesting an order allowing the investigator to provide suitable care for and take immediate custody of the animal. The magistrate shall issue the order only when he finds probable cause to believe that the animal is being cruelly treated and that it is necessary for the investigator to immediately take custody of it. Any magistrate's order issued under this section shall be valid for only 24 hours after its issuance. After he executes the order, the animal cruelty investigator shall return it with a written inventory of the animals seized to the clerk of court in the county where the order was issued.

(b) The animal cruelty investigator may request a law-enforcement officer or animal control officer to accompany him to help him seize the animal. An investigator may forcibly enter any premises or vehicle when necessary to execute the order only if he reasonably believes that the premises or vehicle is unoccupied by any person and that the animal is on the premises or in the vehicle. Forcible entry shall be used only when the animal cruelty investigator is accompanied by a law-enforcement officer. In any case, he must give notice of his identity and purpose to anyone who may be present before entering said premises. Forcible entry shall only be used during the daylight hours.

(c) When he has taken custody of such an animal, the animal cruelty investigator shall file a complaint pursuant to Article 1 of this Chapter as soon as possible. When he seizes the animal, he shall leave with the owner, if known, or affixed to the premises or vehicle a copy of the magistrate's order and a written notice of a description of the animal, the place where the animal will be taken, the reason for taking the animal, and the investigator's intent to file a complaint in district court requesting custody of the animal pursuant to Article 1 of this Chapter.

(d) Notwithstanding the provisions of G.S. 7A-305(c), any person who commences a proceeding under this Article or Article 1 of this Chapter shall not be required to pay any court costs or fees prior to a final judicial determination as provided in G.S. 19A-4, at which time those costs shall be paid pursuant to the provisions of G.S. 6-18.

(e) Any judicial order authorizing forcible entry shall be issued by a district court judge. (1979, c. 808, s. 1.)

§ 19A-47. Care of seized animals.

The investigator must take any animal he seizes directly to some safe and secure place and provide suitable care for it. The necessary expenses of caring for seized animals, including necessary veterinary care, shall be a charge against the animal's owner and a lien on the animal to be enforced as provided by G.S. 44A-4. (1979, c. 808, s. 1.)

§ 19A-48. Interference unlawful.

It shall be a Class 1 misdemeanor, to interfere with an animal cruelty investigator in the performance of his official duties. (1979, c. 808, s. 1; 1993, c. 539, s. 318; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 19A-49. Educational requirements.

Each animal cruelty investigator at his own expense must attend annually a course of at least six hours instruction offered by the North Carolina Humane Federation or some other agency. The course shall be designed to give the investigator expertise in the investigation of complaints relating to the care and treatment of animals. Failure to attend a course approved by the board of county commissioners shall be cause for removal from office. (1979, c. 808, s. 1.)

§§ 19A-50 through 19A-59: Reserved for future codification purposes.

ARTICLE 5.

Spay/Neuter Program.

§ 19A-60. Legislative findings.

The General Assembly finds that the uncontrolled breeding of cats and dogs in the State has led to unacceptable numbers of unwanted dogs, puppies and cats and kittens. These unwanted animals become strays and constitute a public nuisance and a public health hazard. The animals themselves suffer privation and death, are impounded, and most are destroyed at great expense to local governments. It is the intention of the General Assembly to provide a voluntary means of funding a spay/neuter program to provide financial assistance to local governments offering low-income persons reduced-cost spay/neuter services for their dogs and cats and to provide a statewide education program on the benefits of spaying and neutering pets. (2000-163, s. 1.)

Editor's Note. — The numbers of G.S. 19A-60 to 19A-64 were assigned by the Revisor of Statutes, the numbers in Session Laws 2000-63, s. 1 having been G.S. 19A-50 to 19A-54.

§ 19A-61. Spay/Neuter Program established.

There is established in the Department of Health and Human Services a statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals in the State. The program shall consist of the following components:

(1) Education Program. — The Department shall establish a statewide program to educate the public about the benefits of having cats and dogs spayed and neutered. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine, other State agencies and departments, county and city health departments and animal control agencies, and statewide and local humane organizations. The Department may employ outside consultants to assist with the education program.

(2) Local Spay/Neuter Assistance Program. — The Department shall administer the Spay/Neuter Account established in G.S. 19A-62. Monies deposited in the account shall be available to reimburse eligible counties and cities for the direct costs of spay/neuter surgeries for cats and dogs made available to low-income persons. (2000-163, s. 1.)

§ 19A-62. Spay/Neuter Account established.

(a) Creation. — The Spay/Neuter Account is established as a nonreverting special revenue account in the Department of Health and Human Services. The Account consists of the following:

(1) The portion of the fee imposed under G.S. 130A-190(b)(4) for obtaining a rabies vaccination tag from the Department of Health and Human Services.

(2) Ten dollars ($10.00) of the additional fee imposed by G.S. 20-79.7 for an Animal Lovers special license plate.

(3) Any other funds available from appropriations by the General Assembly or from contributions and grants from public or private sources.

(b) Use. — The revenue in the Account shall be used by the Department of Health and Human Services as follows:

(1) If the revenue generated by the portion of the fee imposed under G.S. 130A-190(b)(3) is less than forty-seven thousand five hundred dollars ($47,500) for the fiscal year, then funds up to the difference between forty-seven thousand five hundred dollars ($47,500) and the amount of revenue generated may be used from this Account to fund rabies education and prevention programs.

(2) Twenty percent (20%) shall be used to develop and implement the statewide education program component of the Spay/Neuter Program established in G.S. 19A-61(a).

(3) Up to twenty percent (20%) of the money in the Account may be used to defray the costs of administering the Spay/Neuter Program established in this Article.

(4) Funds remaining after deductions for the education program and administrative expenses shall be distributed quarterly to eligible counties and cities seeking reimbursement for reduced-cost spay/neuter surgeries performed during the previous year. A county or city is ineligible to receive funds under this subdivision unless it requires the owner to show proof of rabies vaccination at the time of the procedure or, if none, require vaccination at the time of the procedure.

(c) Report. — In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account. (2000-163, s. 1; 2007-487, ss. 2, 3; 2008-187, s. 8.)

Editor's Note. — Session Laws 2007-487, s. 3, effective January 1, 2008, was codified as subsection (c) of this section at the direction of the Revisor of statutes.

Effect of Amendments. — Session Laws 2008-187, s. 8, effective August 7, 2008, added "Report. —" at the beginning of subsection (c).

§ 19A-63. Eligibility for distributions from Spay/Neuter Account.

(a) A county or city is eligible for reimbursement from the Spay/Neuter Account if it meets the following condition:

(1) The county or city offers one or more of the following programs to low-income persons on a year-round basis for the purpose of reducing the cost of spaying and neutering procedures for dogs and cats:

a. A spay/neuter clinic operated by the county or city.

b. A spay/neuter clinic operated by a private organization under contract or other arrangement with the county or city.

c. A contract or contracts with one or more veterinarians, whether or not located within the county, to provide reduced-cost spaying and neutering procedures.

d. Subvention of the spaying and neutering costs incurred by low-income pet owners through the use of vouchers or other procedure that provides a discount of the cost of the spaying or neutering procedure fixed by a participating veterinarian or other provider.

e. Subvention of the spaying and neutering costs incurred by persons who adopt a pet from an animal shelter operated by or under contract with the county or city.

(2) Reserved for future codification purposes.

(b) For purposes of this Article, the term "low-income person" shall mean an individual who qualifies for one or more of the programs of public assistance administered by the Department pursuant to Chapter 108A of the General Statutes. (2000-163, s. 1.)

§ 19A-64. Distributions to counties and cities from Spay/Neuter Account.

(a) Reimbursable Costs. — Counties and cities eligible for distributions from the Spay/Neuter Account may receive reimbursement for the direct costs of a spay/neuter surgical procedure for a dog or cat owned by a low-income person meeting the Department's eligibility requirements for spay/neuter services. Reimbursable costs shall include anesthesia, medication, and veterinary services. Counties and cities shall not be reimbursed for the administrative costs of providing reduced-cost spay/neuter services or capital expenditures for facilities and equipment associated with the provision of such services.

(b) Application. — A county or city eligible for reimbursement of spaying and neutering costs from the Spay/Neuter Account shall apply to the Department of Health and Human Services by the last day of January, April, July, and October of each year to receive a distribution from the Account for that quarter. The application shall be submitted in the form required by the Department and shall include an itemized listing of the costs for which reimbursement is sought.

(c) Distribution. — The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within development tier one areas as defined in G.S. 143B-437.08. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in development tier two and three areas as defined in G.S. 143B-437.08.

(2) Among the eligible counties and cities in development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in development tier one areas.

(3) Among the eligible counties and cities in development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in development tier two and three areas. (2000-163, s. 1; 2006-252, s. 2.11.)

§ 19A-65. Annual Report Required From Every Animal Shelter in Receipt of State or Local Funding.

Every county or city animal shelter, or animal shelter operated under contract with a county or city or otherwise in receipt of State or local funding[,] shall prepare an annual report setting forth the numbers, by species, of animals received into the shelter, the number adopted out, the number returned to owner, and the number destroyed. The report shall also contain the total operating expenses of the shelter and the cost per animal handled. The report shall be filed with the Department of Health and Human Services by August 1 of each year. (2000-163, s. 5.)

Editor's Note. — Session Laws 2000-163, s. 5 was codified as this section at the direction of the Revisor of Statutes.

§§ 19A-66 through 19A-69: Reserved for future codification purposes.

ARTICLE 6.

Care of Animal Subjected to Illegal Treatment.

§ 19A-70. Care of animal subjected to illegal treatment.

(a) In every arrest under any provision of Article 47 of Chapter 14 of the General Statutes or under G.S. 67-4.3 or upon the commencement of an action under Article 1 of this Chapter by a county or municipality, by a county-approved animal cruelty investigator, by other county or municipal official, or by an organization operating a county or municipal shelter under contract, if an animal shelter takes custody of an animal, the operator of the shelter may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses expected to be incurred by the animal shelter in caring for and providing for the animal pending the disposition of the litigation. For purposes of this section, "reasonable expenses" includes the cost of providing food, water, shelter, and care, including medical care, for at least 30 days.

(b) Upon receipt of a petition, the court shall set a hearing on the petition to determine the need to care for and provide for the animal pending the disposition of the litigation. The hearing shall be conducted no less than 10 and no more than 15 business days after the petition is filed. The operator of the animal shelter shall mail written notice of the hearing and a copy of the petition to the defendant at the address contained in the criminal charges or the complaint or summons by which a civil action was initiated. If the defendant is in a local detention facility at the time the petition is filed, the operator of the animal shelter shall also provide notice to the custodian of the detention facility.

(c) The court shall set the amount of funds necessary for 30 days' care after taking into consideration all of the facts and circumstances of the case, including the need to care for and provide for the animal pending the disposition of the litigation, the recommendation of the operator of the animal shelter, the estimated cost of caring for and providing for the animal, and the defendant's ability to pay. If the court determines that the defendant is unable to deposit funds, the court may consider issuing an order under subsection (f) of this section.

Any order for funds to be deposited pursuant to this section shall state that if the operator of the animal shelter files an affidavit with the clerk of superior court, at least two business days prior to the expiration of a 30-day period, stating that, to the best of the affiant's knowledge, the case against the defendant has not yet been resolved, the order shall be automatically renewed every 30 days until the case is resolved.

(d) If the court orders that funds be deposited, the amount of funds necessary for 30 days shall be posted with the clerk of superior court. The defendant shall also deposit the same amount with the clerk of superior court every 30 days thereafter until the litigation is resolved, unless the defendant requests a hearing no less than five business days prior to the expiration of a 30-day period. If the defendant fails to deposit the funds within five business days of the initial hearing, or five business days of the expiration of a 30-day period, the animal is forfeited by operation of law. If funds have been deposited in accordance with this section, the operator of the animal shelter may draw from the funds the actual costs incurred in caring for the animal.

In the event of forfeiture, the animal shelter may determine whether the animal is suitable for adoption and whether adoption can be arranged for the animal. The animal may not be adopted by the defendant or by any person residing in the defendant's household. If the adopted animal is a dog used for fighting, the animal shelter shall notify any persons adopting the dog of the liability provisions for owners of dangerous dogs under Article 1A of Chapter 67 of the General Statutes. If no adoption can be arranged after the forfeiture, or the animal is unsuitable for adoption, the shelter shall humanely euthanize the animal.

(e) The deposit of funds shall not prevent the animal shelter from disposing of the animal prior to the expiration of the 30-day period covered by the deposit if the court makes a final determination of the charges or claims against the defendant. Upon determination, the defendant is entitled to a refund for any portion of the deposit not incurred as expenses by the animal shelter. A person who is acquitted of all criminal charges or not found to have committed animal cruelty in a civil action under Article 1 of this Chapter is entitled to a refund of the deposit remaining after any draws from the deposit in accordance with subsection (d) of this section.

(f) Pursuant to subsection (c) of this section, the court may order a defendant to provide necessary food, water, shelter, and care, including any necessary medical care, for any animal that is the basis of the charges or claims against the defendant without the removal of the animal from the existing location and until the charges or claims against the defendant are adjudicated. If the court issues such an order, the court shall provide for an animal control officer or other law enforcement officer to make regular visits to the location to ensure that the animal is receiving necessary food, water, shelter, and care, including any necessary medical care, and to impound the animal if it is not receiving those necessities. (2005-383, s. 1; 2006-113, s. 2.1.)

Chapter 20.

Motor Vehicles.

Article 1.

Division of Motor Vehicles.

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20-1. Division of Motor Vehicles established.
20-2. Commissioner of Motor Vehicles; rules.
20-3. Organization of Division.
20-3.1. Purchase of additional airplanes.
20-4. [Repealed.]
20-4.01. Definitions.

Article 1A.

Reciprocity Agreements as to Registration and Licensing.

20-4.1. Declaration of policy.
20-4.2. Definitions.
20-4.3. Commissioner may make reciprocity agreements, arrangements or declarations.
20-4.4. Authority for reciprocity agreements; provisions; reciprocity standards.
20-4.5. Base-state registration reciprocity.
20-4.6. [Repealed.]
20-4.7. Extension of reciprocal privileges to lessees authorized.
20-4.8. Automatic reciprocity, when.
20-4.9. Suspension of reciprocity benefits.
20-4.10. Agreements to be written, filed and available for distribution.
20-4.11. Reciprocity agreements in effect at time of Article.
20-4.12. Article part of and supplemental to motor vehicle registration law.
20-4.13 through 20-4.17. [Reserved.]

Article 1B.

Reciprocal Provisions as to Arrest of Nonresidents.

20-4.18. Definitions.
20-4.19. Issuance of citation to nonresident; officer to report noncompliance.
20-4.20. Division to transmit report to reciprocating state; suspension of license for noncompliance with citation issued by reciprocating state.

Article 1C.

Drivers License Compact.

20-4.21. Title of Article.
20-4.22. Commissioner may make reciprocity agreements, arrangements, or declarations.
20-4.23. Legislative findings and policy.

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20-4.24. Reports of convictions; effect of reports.
20-4.25. Review of license status in other states upon application for license in member state.
20-4.26. Effect on other laws or agreements.
20-4.27. Effect on other State driver license laws.
20-4.28. Administration and exchange of information.
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20-5. Title of Article.
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20-7.01. [Repealed.]
20-7.1. Notice of change of address or name.
20-7.2. [Repealed.]
20-7.3. Availability of organ, eye, and tissue donor cards at motor vehicle offices.
20-7.4. License to Give Trust Fund established.
20-7.5. License to Give Trust Fund Commission established.
20-7.6. Powers and duties of the License to Give Trust Fund Commission.
20-8. Persons exempt from license.
20-9. What persons shall not be licensed.
20-9.1. Physicians and psychologists providing medical information on drivers with physical and mental disabilities.
20-9.2. Selective service system registration requirements.
20-9.3. Notification of requirements for sex offender registration.
20-10. Age limits for drivers of public passenger-carrying vehicles.
20-10.1. Mopeds.
20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.
20-11.1, 20-12. [Repealed.]
20-12.1. Impaired supervision or instruction.
20-13. Suspension of license of provisional licensee.
20-13.1. [Repealed.]

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20-13.2. Grounds for revoking provisional license.
20-14. Duplicate licenses.
20-15. Authority of Division to cancel license or endorsement.
20-15.1. Revocations when licensing privileges forfeited.
20-16. Authority of Division to suspend license.
20-16.01. Double penalties for offenses committed while operating a commercial motor vehicle.
20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders.
20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.
20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Department of Health and Human Services; use of test results or refusal.
20-16.3A. Checking stations and roadblocks.
20-16.4. [Repealed.]
20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.
20-17. Mandatory revocation of license by Division.
20-17.1. Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs.
20-17.2. [Repealed.]
20-17.3. Revocation for underage purchasers of alcohol.
20-17.4. Disqualification to drive a commercial motor vehicle.
20-17.5. Effect of disqualification.
20-17.6. Restoration of a license after a conviction of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.
20-17.7. Commercial motor vehicle out-of-service fines authorized.
20-17.8. (For change in effective date, see Editor's note) Restoration of a license after certain driving while impaired convictions; ignition interlock.
20-17.9. Revocation of commercial drivers license with a P or S endorsement upon conviction of certain offenses.
20-18. Conviction of offenses described in § 20-181 not ground for suspension or revocation.
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20-19. Period of suspension or revocation; conditions of restoration.
20-20. [Repealed.]
20-20.1. Limited driving privilege for certain revocations.
20-20.2. Processing fee for limited driving privilege.
20-21. No operation under foreign license during suspension or revocation in this State.
20-22. Suspending privileges of nonresidents and reporting convictions.
20-23. Revoking resident's license upon conviction in another state.
20-23.1. Suspending or revoking operating privilege of person not holding license.
20-23.2. Suspension of license for conviction of offense involving impaired driving in federal court.
20-24. When court or child support enforcement agency to forward license to Division and report convictions, child support delinquencies, and prayers for judgment continued.
20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.
20-24.2. Court to report failure to appear or pay fine, penalty or costs.
20-25. Right of appeal to court.
20-26. Records; copies furnished; charge.
20-27. Availability of records.
20-27.1. Unlawful for sex offender to drive commercial passenger vehicle or school bus without appropriate commercial license or while disqualified.
20-28. Unlawful to drive while license revoked, after notification, or while disqualified.
20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.
20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.
20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked or without license and insurance.
20-28.4. Release of impounded motor vehicles by judge.
20-28.5. Forfeiture of impounded motor vehicle or funds.
20-28.6. [Repealed.]
20-28.7. Responsibility of Division of Motor Vehicles.
20-28.8. Reports to the Division.
20-28.9. Authority for the Department of Pub-

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lic Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.
20-29. Surrender of license.
20-29.1. Commissioner may require reexamination; issuance of limited or restricted licenses.
20-30. Violations of license or learner's permit provisions.
20-31. Making false affidavits perjury.
20-32. Unlawful to permit unlicensed minor to drive motor vehicle.
20-33. [Repealed.]
20-34. Unlawful to permit violations of this Article.
20-34.1. Violations for wrongful issuance of a drivers license or a special identification card.
20-35. Penalties for violating Article; defense to driving without a license.
20-36. (Effective until March 31, 2010) Ten-year-old convictions not considered.
20-36. (Effective March 31, 2010) Ten-year-old convictions not considered.
20-37. Limitations on issuance of licenses.
20-37.01. Drivers License Technology Fund.
20-37.02. Verification of drivers license information.

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Afflicted, Disabled or Handicapped Persons.

20-37.1 through 20-37.4. [Repealed.]
20-37.5. Definitions.
20-37.6. Parking privileges for handicapped drivers and passengers.
20-37.6A. Parking privileges for out-of-state handicapped drivers and passengers.

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Special Identification Cards for Nonoperators.

20-37.7. Special identification card.
20-37.8. Fraudulent use prohibited.
20-37.9. Notice of change of address or name.

Article 2C.

Commercial Driver License.

20-37.10. Title of Article.
20-37.11. Purpose.
20-37.12. Commercial drivers license required.
20-37.13. Commercial drivers license qualification standards.
20-37.14. Nonresident commercial driver license.
20-37.14A. Prohibit issuance or renewal of certain categories of commercial drivers licenses to sex offenders.
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20-37.15. Application for commercial drivers license.
20-37.16. Content of license; classifications and endorsements; fees.
20-37.17. Record check and notification of license issuance.
20-37.18. Notification required by driver.
20-37.19. Employer responsibilities.
20-37.20. Notification of traffic convictions.
20-37.20A. Driving record notation for testing positive in a drug or alcohol test.
20-37.20B. Appeal of disqualification for testing positive in a drug or alcohol test.
20-37.21. Penalties.
20-37.22. Rule making authority.
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20-38. [Repealed.]

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Implied-Consent Offense Procedures.

20-38.1. Applicability.
20-38.2. Investigation.
20-38.3. Police processing duties.
20-38.4. Initial appearance.
20-38.5. Facilities.
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20-38.7. Appeal to superior court.

Article 3.

Motor Vehicle Act of 1937.

Part 1. General Provisions.

20-38.100. [Reserved.]

Part 2. Authority and Duties of Commissioner and Division.

20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal; fees.
20-39.1. Publicly owned vehicles to be marked; private license plates on publicly owned vehicles.
20-40. Offices of Division.
20-41. Commissioner to provide forms required.
20-42. Authority to administer oaths and certify copies of records.
20-43. Records of Division.
20-43.1. Disclosure of personal information in motor vehicle records.
20-43.2. Internet access to organ donation records by organ procurement organizations.
20-43.3. [Reserved.]
20-43.4. Current list of licensed drivers to be provided to jury commissions.

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20-44. Authority to grant or refuse applications.
20-45. Seizure of documents and plates.
20-46. [Repealed.]
20-47. Division may summon witnesses and take testimony.
20-48. Giving of notice.
20-49. Police authority of Division.
20-49.1. Supplemental police authority of Division officers.
20-49.2. Supplemental authority of State Highway Patrol Motor Carrier Enforcement officers.
20-49.3. Bureau of License and Theft; custody of seized vehicles.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

20-50. Owner to secure registration and certificate of title; temporary registration markers.
20-50.1, 20-50.2. [Repealed.]
20-50.3. (For contingent repeal, see note) Division to furnish county assessors registration lists.
20-50.4. (For expiration date, see note) Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.
20-50.4. (For effective date, see note) Division to refuse to register vehicles on which county and municipal taxes and fees are not paid and when there is a failure to meet court-ordered child support obligations.
20-51. Exempt from registration.
20-52. Application for registration and certificate of title.
20-52.1. Manufacturer's certificate of transfer of new motor vehicle.
20-53. Application for specially constructed, reconstructed, or foreign vehicle.
20-53.1. Specially constructed vehicle certificate of title and registration.
20-53.2. [Reserved.]
20-53.3. Appeal of specially constructed vehicle classification determination to Vehicle Classification Review Committee.
20-54. Authority for refusing registration or certificate of title.
20-54.1. Forfeiture of right of registration.
20-55. Examination of registration records and index of seized, stolen, and recovered vehicles.
20-56. Registration indexes.
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20-58. Perfection by indication of security interest on certificate of title.
20-58.1. Duty of the Division upon receipt of application for notation of security interest.
20-58.2. Date of perfection.
20-58.3. Notation of assignment of security interest on certificate of title.
20-58.4. Release of security interest.
20-58.5. Duration of security interest in favor of corporations which dissolve or become inactive.
20-58.6. Duty of secured party to disclose information.
20-58.7. Cancellation of certificate.
20-58.8. Applicability of §§ 20-58 to 20-58.8; use of term "lien".
20-58.9. [Repealed.]
20-58.10. Effective date of §§ 20-58 to 20-58.9.
20-59. Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.
20-60. Owner after transfer not liable for negligent operation.
20-61. Owner dismantling or wrecking vehicle to return evidence of registration.
20-62. [Repealed.]
20-62.1. Purchase of vehicles for purposes of scrap or parts only.
20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.
20-63.01. Bonds required for commission contractors.
20-63.1. Division may cause plates to be reflectorized.
20-64. Transfer of registration plates to another vehicle.
20-64.1. [Repealed.]
20-64.2. Permit for emergency use of registration plate.
20-65. [Repealed.]
20-66. Renewal of vehicle registration.
20-66.1. [Repealed.]
20-67. Notice of change of address or name.
20-68. Replacement of lost or damaged certificates, cards and plates.
20-69. Division authorized to assign new engine number.
20-70. Division to be notified when another engine is installed or body changed.
20-71. Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title.
20-71.1. Registration evidence of ownership;

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20-71.2. Declaration of purpose.
20-71.3. Salvage and other vehicles — titles and registration cards to be branded.
20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

Part 4. Transfer of Title or Interest.

20-72. Transfer by owner.
20-73. New owner must get new certificate of title.
20-74. Penalty for making false statement about transfer of vehicle.
20-75. When transferee is dealer or insurance company.
20-75.1. Conditional delivery of motor vehicles.
20-76. Title lost or unlawfully detained; bond as condition to issuance of new certificate.
20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.
20-78. When Division to transfer registration and issue new certificate; recordation.

Part 5. Issuance of Special Plates.

20-79. Dealer license plates.
20-79.01. Special sports event temporary license plates.
20-79.1. (For expiration date, see note) Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.
20-79.1. (For effective date, see note) Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.
20-79.1A. (For effective date, see note) Limited registration plates.
20-79.2. Transporter plates.
20-79.3. [Repealed.]
20-79.4. Special registration plates.
20-79.5. Special registration plates for elected and appointed State government officials.
20-79.6. Special registration plates for members of the judiciary.
20-79.7. Fees for special registration plates and distribution of the fees.
20-80 through 20-81.2. [Repealed.]
20-81.3. [Recodified.]
20-81.4 through 20-81.11. [Repealed.]
20-81.12. Collegiate insignia plates and certain other special plates.
20-82. [Repealed.]

Part 6. Vehicles of Nonresidents of State; Permanent Plates; Highway Patrol.

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20-83. Registration by nonresidents.
20-84. Permanent registration plates; State Highway Patrol.
20-84.1. [Repealed.]

Part 6A. Rental Vehicles.

20-84.2. Definition; reciprocity; Commissioner's powers.

Part 7. Title and Registration Fees.

20-85. (See Editor's Note) Schedule of fees.
20-85.1. Registration by mail; one-day title service; fees.
20-86. Penalty for engaging in a "for-hire" business without proper license plates.
20-86.1. International Registration Plan.
20-87. Passenger vehicle registration fees.
20-87.1. Interchange of passenger buses with nonresident common carriers of passengers.
20-88. Property-hauling vehicles.
20-88.01. Revocation of registration for failure to register for or comply with road tax or pay civil penalty for buying or selling non-tax-paid fuel.
20-88.02. Registration of logging vehicles.
20-88.1. Driver education.
20-89, 20-90. [Repealed.]
20-91. Audit of vehicle registrations under the International Registration Plan.
20-91.1 to 20-93. [Repealed.]
20-94. Partial payments.
20-95. Prorated fee for license plate issued for other than a year.
20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.
20-97. Taxes credited to Highway Fund; municipal vehicle taxes.
20-98, 20-99. [Repealed.]
20-100. Vehicles junked or destroyed by fire or collision.
20-101. Certain business vehicles to be marked.
20-101.1. Conspicuous disclosure of dealer administrative fees.
20-101.2. Conspicuous disclosure of dealer finance yield charges.

Part 8. Anti-Theft and Enforcement Provisions.

20-102. Report of stolen and recovered motor vehicles.
20-102.1. False report of theft or conversion a misdemeanor.

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20-102.2. Report of failure to return hired motor vehicles.
20-103. Reports by owners of stolen and recovered vehicles.
20-104. Action by Division on report of stolen or embezzled vehicles.
20-105. [Repealed.]
20-106. Receiving or transferring stolen vehicles.
20-106.1. Fraud in connection with rental of motor vehicles.
20-106.2. Sublease and loan assumption arranging regulated.
20-107. Injuring or tampering with vehicle.
20-108. Vehicles or component parts of vehicles without manufacturer's numbers.
20-109. Altering or changing engine or other numbers.
20-109.1. Surrender of titles to salvage vehicles.
20-109.2. Surrender of title to manufactured home.
20-110. When registration shall be rescinded.
20-111. Violation of registration provisions.
20-112. Making false affidavit perjury.
20-113. [Repealed.]
20-114. Duty of officers; manner of enforcement.
20-114.1. Willful failure to obey law-enforcement or traffic-control officer; firemen as traffic-control officers; appointment, etc., of traffic-control officers.
20-114.3. [Repealed.]

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

20-115. Scope and effect of regulations in this title.
20-115.1. Limitations on tandem trailers and semitrailers on certain North Carolina highways.
20-116. Size of vehicles and loads.
20-117. Flag or light at end of load.
20-117.1. Requirements for mirrors and fuel container.
20-118. Weight of vehicles and load.
20-118.1. Officers may weigh vehicles and require overloads to be removed.
20-118.2. Authority to fix higher weight limitations at reduced speeds for certain vehicles.
20-118.3. Vehicle or combination of vehicles operated without registration plate subject to civil penalty.
20-118.4. Firefighting equipment exempt from size and weight restrictions while transporting or moving heavy equipment in an emergency; permits.

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20-119. Special permits for vehicles of excessive size or weight; fees.
20-119.1. Use of excess overweight and oversize fees.
20-120. Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads.
20-121. When authorities may restrict right to use highways.
20-121.1. Operation of a low-speed vehicle on certain roadways.
20-122. Restrictions as to tire equipment.
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20-123.1. Steering mechanism.
20-123.2. Speedometer.
20-124. Brakes.
20-125. Horns and warning devices.
20-125.1. Directional signals.
20-126. Mirrors.
20-127. Windows and windshield wipers.
20-128. Exhaust system and emissions control devices.
20-128.1. Control of visible emissions.
20-128.2. Motor vehicle emission standards.
20-129. Required lighting equipment of vehicles.
20-129.1. Additional lighting equipment required on certain vehicles.
20-129.2. Lighting equipment for mobile homes.
20-130. Additional permissible light on vehicle.
20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.
20-130.2. Use of amber lights on certain vehicles.
20-130.3. Use of white or clear lights on rear of vehicles prohibited; exceptions.
20-131. Requirements as to headlamps and auxiliary driving lamps.
20-132. Acetylene lights.
20-133. Enforcement of provisions.
20-134. Lights on parked vehicles.
20-135. Safety glass.
20-135.1. [Repealed.]
20-135.2. Safety belts and anchorages.
20-135.2A. (See Editor's note) Seat belt use mandatory.
20-135.2B. Transporting children under 16 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.
20-135.3. Seat belt anchorages for rear seats of motor vehicles.
20-135.4. Certain automobile safety standards.
20-136. Smoke screens.
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video players, monitors, and screens.
20-136.2. Air bag installation.
20-137. [Repealed.]
20-137.1. Child restraint systems required.
20-137.2. Operation of vehicles resembling law-enforcement vehicles unlawful; punishment.
20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.
20-137.4. Unlawful use of a mobile phone.
20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.
20-137.5. Child passenger safety technician; limitation of liability.

Part 9A. Abandoned and Derelict Motor Vehicles.

20-137.6. Declaration of purpose.
20-137.7. Definitions of words and phrases.
20-137.8. Secretary may adopt rules and regulations.
20-137.9. Removal from private property.
20-137.10. Abandoned and derelict vehicles to be tagged; determination of value.
20-137.11. Title to vest in State.
20-137.12. Secretary may contract for disposal.
20-137.13. No liability for removal.
20-137.14. Enclosed, antique, registered and certain other vehicles exempt.

Part 10. Operation of Vehicles and Rules of the Road.

20-138. [Repealed.]
20-138.1. Impaired driving.
20-138.2. Impaired driving in commercial vehicle.
20-138.2A. Operating a commercial vehicle after consuming alcohol.
20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.
20-138.2C. Possession of alcoholic beverages while operating a commercial motor vehicle.
20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.
20-138.4. Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case.
20-138.5. Habitual impaired driving.
20-138.6. [Reserved.]
20-138.7. Transporting an open container of alcoholic beverage.
20-139. [Repealed.]
20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

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20-140. Reckless driving.
20-140.1. [Repealed.]
20-140.2. Overloaded or overcrowded vehicle.
20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.
20-140.4. Special provisions for motorcycles and mopeds.
20-140.5. Special mobile equipment may tow certain vehicles.
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20-157.1. Funeral processions.

20-158. Vehicle control signs and signals.

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20-183.6. [Repealed.]
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20-193. [Repealed.]
20-194. Expense of administration; defense of members and other State law-enforcement officers in civil actions; payment of judgments.
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20-196.1. [Repealed.]
20-196.2. Use of aircraft to discover certain motor vehicle violations; declaration of policy.
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Article 6A.

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Article 8.

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Article 8A.

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Article 9.

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20-279.20. Certificate furnished by nonresident as proof.
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20-279.22. Notice of cancellation or termination of certified policy.
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20-279.26. Owner may give proof for others.
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Article 10.

Financial Responsibility of Taxicab Operators.

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Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

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Article 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

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20-287. Licenses required; penalties.
20-288. Application for license; license requirements; expiration of license; bond.
20-289. License fees.
20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.
20-291. Representatives to carry license and display it on request; license to name employer.
20-292. Dealers may display motor vehicles for sale at retail only at established salesrooms.
20-292.1. Supplemental temporary license for sale of antique and specialty vehicles.
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20-299. Acts of officers, directors, partners, salesmen and other representatives.
20-300. Appeals from actions of Commissioner.
20-301. Powers of Commissioner.
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20-302. Rules and regulations.
20-303. Installment sales to be evidenced by written instrument; statement to be delivered to buyer.
20-304. Coercion of retail dealer by manufacturer or distributor in connection with installment sales contract prohibited.
20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.
20-305.1. Automobile dealer warranty obligations.
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20-307. Article applicable to existing and future franchises and contracts.
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20-308.1. Civil actions for violations.
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Article 12A.

Motor Vehicle Captive Finance Source Law.

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20-308.14. Definitions.
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Article 13.

The Vehicle Financial Responsibility Act of 1957.

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20-309.1. [Repealed.]
20-309.2. Insurer shall notify Division of actions on insurance policies.
20-311. Action by the Division when notified of a lapse in financial responsibility.
20-312. [Repealed.]
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20-313.1. Making false certification or giving false information a misdemeanor.
20-314. Applicability of Article 9A; its provisions continued.
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Article 14.

Driver Training School Licensing Law.

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20-321. Enforcement of Article by Commissioner.
20-322. Licenses for schools necessary; regulations as to requirements.
20-323. Licenses for instructors necessary; regulations as to requirements.
20-324. Expiration and renewal of licenses; fees.
20-325. Cancellation, suspension, revocation, and refusal to issue or renew licenses.
20-326. Exemptions from Article.
20-327. Penalties for violating Article or regulations.
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20-329 through 20-339. [Reserved.]

Article 15.

Vehicle Mileage Act.

20-340. Purpose.
20-341. Definitions.
20-342. Unlawful devices.
20-343. Unlawful change of mileage.
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20-345. Conspiracy.
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20-351.8. Remedies.
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20-352, 20-353. [Reserved.]

Article 15B.

North Carolina Motor Vehicle Repair Act.

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20-354.1. Scope and application.
20-354.2. Definitions.
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20-354.4. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.
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20-354.6. Invoice required of motor vehicle repair shop.
20-354.7. Required disclosure; signs; notice to customers.
20-354.8. Prohibited acts and practices.
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Professional Housemoving.

20-356. Definitions.
20-357. Housemovers to be licensed.
20-358. Qualifications to become licensed.
20-359. Effective period of license.
20-359.1. Insurance requirements.
20-360. Requirements for permit.
20-361. Application for permit and permit fee.
20-362. Liability of housemovers.
20-363. Removal and replacement of obstructions.
20-364. Route changes.
20-365. Loading or parking on right-of-way.
20-366. Effect of weather.
20-367. Obtaining license or permit by fraud.
20-368. Municipal regulations.
20-369. Out-of-state licenses and permits.
20-370. Speed limits.
20-371. Penalties.
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20-373. [Reserved.]
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20-375. [Reserved.]

Article 17.

Motor Carrier Safety Regulation Unit.

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20-376. Definitions.

Part 2. Authority and Powers of Department of Crime Control and Public Safety.

20-377. General powers of Department of Crime Control and Public Safety.

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20-378. [Repealed.]
20-379. Department of Crime Control and Public Safety to audit motor carriers for compliance.
20-380. Department of Crime Control and Public Safety may investigate accidents involving motor carriers and promote general safety program.
20-381. Specific powers and duties of Department of Crime Control and Public Safety applicable to motor carriers; agricultural exemption.
20-382. For-hire motor carrier registration, insurance verification, and temporary trip permit authority.
20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.
20-382.2. Penalty for failure to comply with registration or insurance verification requirements.
20-383. Inspectors and officers given enforcement authority.
20-384. Penalty for certain violations.

Part 3. Fees and Charges.

20-385. Fee schedule.
20-386. Fees, charges and penalties; disposition.

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20-387. Motor carrier violating any provision of Article, rules or orders; penalty.
20-388. Willful acts of employees deemed those of motor carrier.
20-389. Actions to recover penalties.
20-390. Refusal to permit Department of Crime Control and Public Safety to inspect records made misdemeanor.
20-391. Violating rules, with injury to others.
20-392. Failure to make report; obstructing Division or Department of Crime Control and Public Safety.
20-393. Disclosure of information by employee of Department of Crime Control and Public Safety unlawful.
20-394. Remedies for injuries cumulative.
20-395. Willful injury to property of motor carrier a misdemeanor.
20-396. Unlawful motor carrier operations.
20-397. Furnishing false information to the Department of Crime Control and Public Safety; withholding information from the Department of Crime Control and Public Safety.

Article 1.

Division of Motor Vehicles.

§ 20-1. Division of Motor Vehicles established.

The Division of Motor Vehicles of the Department of Transportation is established. This Chapter sets out the powers and duties of the Division. (1941, c. 36, s. 1; 1949, c. 1167; 1973, c. 476, s. 193; 1975, c. 716, s. 5; c. 863; 1987, c. 827, s. 2; c. 847, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 1.)

Local Modification. — Dare: 1995, c. 196, s. 1; (As to Chapter 20) city of Charlotte: 2001-88; (As to Chapter 20) city of Salisbury: 2003-130.

Editor's Note. — As to the inapplicability of the contested case provisions of Chapter 150B to the Department of Transportation, except as provided in G.S. 136-29, see G.S. 150B-1(e).

Legal Periodicals. — For note on the conflict between the North Carolina Motor Vehicle Act and the UCC, see 65 N.C.L. Rev. 1156 (1987).

For legislative survey on motor vehicle law, see 22 Campbell L. Rev. 253 (2000).

CASE NOTES

Cited in State v. Wyrick, 35 N.C. App. 352, 241 S.E.2d 355 (1978).

§ 20-2. Commissioner of Motor Vehicles; rules.

(a) Commissioner and Assistants. — The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation. The Commissioner shall be paid an annual salary to be fixed by the General Assembly in the Current Operations Appropriations Act and allowed his traveling expenses as allowed by law.

In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commissioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles.

(b) Rules. — The Commissioner may adopt rules to implement this Chapter. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner. (1941, c. 36, s. 2; 1945, c. 527; 1955, c. 472; 1975, c. 716, s. 5; 1983, c. 717, s. 5; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1991, c. 477, s. 4.)

CASE NOTES

Cited in Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto, Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987); Murray v. Justice, 96 N.C. App. 169, 385 S.E.2d 195 (1989).

§ 20-3. Organization of Division.

The Commissioner, subject to the approval of the Secretary of the Department of Transportation, shall organize and administer the Division in such manner as he may deem necessary to conduct the work of the Division. (1941, c. 36, s. 3; 1975, c. 716, s. 5.)

§ 20-3.1. Purchase of additional airplanes.

The Division of Motor Vehicles shall not purchase additional airplanes without the express authorization of the General Assembly. (1963, c. 911, s. 11/2; 1971, c. 198; 1975, c. 716, s. 5.)

§ 20-4: Repealed by Session Laws 2002-190, s. 4, effective January 1, 2003.

Editor's Note. — Session Laws 2002-190, s. 1, provides: "All statutory authority, powers, duties, and functions, including rulemaking, budgeting, purchasing, records, personnel, personnel positions, salaries, property, and unexpended balances of appropriations, allocations, reserves, support costs, and other funds allocated to the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing are transferred to and vested in the Department of Crime Control and Public Safety. This transfer has all the elements of a Type I transfer as defined in G.S. 143A-6.

"The Department of Crime Control and Public Safety shall be considered a continuation of the transferred portion of the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the purpose of succession to all rights, powers, duties, and obligations of the Enforcement Section and of those rights, powers, duties, and obligations exercised by the Department of Transportation, Division of Motor Vehicles on behalf of the Enforcement Section. Where the Department of Transportation, the Division of Motor Vehicles, or the Enforcement Section, or any combination thereof are referred to by law, contract, or other document, that reference shall apply to the Department of Crime Control and Public Safety.

"All equipment, supplies, personnel, or other properties rented or controlled by the Department of Transportation, Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing shall be administered by the Department of Crime Control and Public Safety."

Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. — Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. — The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. — A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

(1d) Business District. — The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. — As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud, or to which G.S. 20-15(a)(3) applies, is void and terminated.

(2a) Class A Motor Vehicle. — A combination of motor vehicles that meets either of the following descriptions:

a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. — Any of the following:

a. A single motor vehicle that has a GVWR of at least 26,001 pounds.

b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. — Any of the following:

a. A single motor vehicle not included in Class B.

b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. — A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with G.S. 20-139.1, including duplicate or sequential analyses.

(3b) Chemical Analyst. — A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). — A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. — Any of the following motor vehicles that are designed or used to transport passengers or property:
   a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
   b. A Class B motor vehicle.
   c. A Class C motor vehicle that meets either of the following descriptions:
      1. Is designed to transport 16 or more passengers, including the driver.
      2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.
   d. Repealed by Session Laws 1999, c. 330, s. 9, effective December 1, 1999.

(4) Commissioner. — The Commissioner of Motor Vehicles.

(4a) Conviction. — A conviction for an offense committed in North Carolina or another state:
   a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:
      1. A final conviction of a criminal offense, including a no contest plea.
      2. A determination that a person is responsible for an infraction, including a no contest plea.
      3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
      4. A third or subsequent prayer for judgment continued within any five-year period.
      5. Any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.
   b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
      1. An unvacated adjudication of guilt.
      2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
      3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
      4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
      5. A final conviction of a criminal offense, including a no contest plea.
      6. **(Effective March 31, 2010)** Any prayer for judgment continued, including any payment of a fine or court costs, if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

(4b) Crash. — Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous.

(5) Dealer. — Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers, or semitrailers in this State, and having an established place of business in this State.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286.

(5a) Disqualification. — A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Electric Personal Assistive Mobility Device. — A self-balancing nontandem two-wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

(7b) **(Effective until March 31, 2010)** Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(7b) **(Effective March 31, 2010)** Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle and would be subject to the alcohol and controlled substance testing provisions of 49 C.F.R. § 382 and also includes any consortium or third-party administrator administering the alcohol and controlled substance testing program on behalf of owner-operators subject to the provisions of 49 C.F.R. § 382.

(8) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. — Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(11a) For-Hire Motor Carrier. — A person who transports passengers or property by motor vehicle for compensation.

(12) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Golf Cart. — A vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(12b) Gross Vehicle Weight Rating (GVWR). — The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used.

(12c) Hazardous Materials. — Any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under Subpart F of Part 172 of Title 49 of the Code of Federal Regulations (1 October 2007 Edition), or any quantity of a material listed as a select agent or toxin under Part 73 of Title 42 of the Code of Federal Regulations (1 October 2007 Edition).

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. — Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. — Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(15a) Inoperable Vehicle. — A motor vehicle that is substantially disassembled and for this reason is mechanically unfit or unsafe to be operated or moved upon a public street, highway, or public vehicular area.

(16) Intersection. — The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. — Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

a. Any temporary license or learner's permit;
b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
c. Any nonresident's operating privilege.

(18) Local Authorities. — Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. — Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. — A type of passenger vehicle as defined in G.S. 105-164.3.

(21b) Motor Carrier. — A for-hire motor carrier or a private motor carrier.

(22) Motorcycle. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. — A declaration that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service.

(26) Owner. — A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the

mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. —

a. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. — Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. — Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. — Defined in G.S. 105-164.3.

d2. Motor home or house car. — A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. — A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. — A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted primarily yellow below the roofline, and that bears the plainly visible words "School Bus" on the front and rear. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. — Passenger vehicles included in the definition of U-drive-it vehicles set forth in this section.

f. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

h. Low-speed vehicle. A four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour.

(28) Person. — Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. — Every tire in which compressed air is designed to support the load.

(29a) Private Motor Carrier. — A person who transports passengers or property by motor vehicle in interstate commerce and is not a for-hire motor carrier.

(30) Private Road or Driveway. — Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. —

a. Vehicles used for the transportation of property.

b., c. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4.

d. Semitrailers. — Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. — Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.
c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.
d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

(32a) Recreational Vehicle. — A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper.
a. Motor home. — As defined in G.S. 20-4.01(27)d2.
b. Travel trailer. — A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.
c. Fifth-wheel trailer. — A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
d. Camping trailer. — A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
e. Truck camper. — A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

(32b) Regular Drivers License. — A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33)a. Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.
b. Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.
c. Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.
d. Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.
f. Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. — Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Crash. — A crash involving a motor vehicle that results in one or more of the following:
a. Death or injury of a human being.
b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G. S. 20-28.3.

(33c) Reserve components of the Armed Forces of the United States. — The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard.

(34) Resident. — Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. — Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. — That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. — Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. — Written agreement which reserves or creates a security interest.

(41) Security Interest. — An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. — A conviction of one of the following offenses when operating a commercial or other motor vehicle:
a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.

c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported.

(42) Solid Tire. — Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. — Motor vehicles required to be registered under this Chapter and that fit within one of the following categories:
a. Replica vehicle. — A vehicle, excluding motorcycles, that when assembled replicates an earlier year, make, and model vehicle.
b. Street rod vehicle. — A vehicle, excluding motorcycles, manufactured prior to 1949 that has been materially altered or has a body constructed from nonoriginal materials.
c. Custom-built vehicle. — A vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts that has an exterior that does not replicate or resemble any other manufactured vehicle. This category also includes any motorcycle that was originally sold unassembled and manufactured from a kit or that has been materially altered or that has a body constructed from nonoriginal materials.

(44) Special Mobile Equipment. — Defined in G.S. 105-164.3.

(44a) Specialty Vehicles. — Vehicles of a type required to be registered under this Chapter that are modified from their original construction for an educational, emergency services, or public safety use.

(45) State. — A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina. For provisions in this Chapter that apply to commercial drivers licenses, "state" means a state of the United States and the District of Columbia.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. — Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) U-drive-it vehicles. — The following vehicles that are rented to a person, to be operated by that person:
a. A private passenger vehicle other than the following:
    1. A private passenger vehicle of nine-passenger capacity or less that is rented for a term of one year or more.

2. A private passenger vehicle that is rented to public school authorities for driver-training instruction.

b. A property-hauling vehicle under 7,000 pounds that does not haul products for hire and that is rented for a term of less than one year.

c. Motorcycles.

(48b) Under the Influence of an Impairing Substance. — The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(48c) Utility Vehicle. — Vehicle designed and manufactured for general maintenance, security, recreational, and landscaping purposes, but does not include vehicles designed and used primarily for the transportation of persons or property on a street or highway.

(49) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement. This term shall not include an electric personal assistive mobility device as defined in G.S. 20-4.01(7a).

(50) Wreckers. — Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed. (1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1; 1987 (Reg. Sess., 1988), c. 1069; c. 1105, s. 1; c. 1112, ss. 1-3; 1989, c. 455, ss. 1, 2; c. 727, s. 219(1); c. 771, ss. 1, 18; 1991, c. 449, s. 2; c. 726, ss. 1-4; 1991 (Reg. Sess., 1992), c. 1015, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 22; 1995, c. 191, s. 1; 1995 (Reg. Sess., 1996), c. 756, ss. 2-4; 1997-379, s. 5.1; 1997-443, s. 11A.8; 1997-456, s. 27; 1998-149, s. 1; 1998-182, ss. 1, 1.1, 26; 1998-217, s. 62(e); 1999-330, s. 9; 1999-337, s. 28(c)-(e); 1999-406, s. 14; 1999-452, ss. 1-5; 2000-155, s. 9; 2000-173, s. 10(c); 2001-212, s. 2; 2001-341, ss. 1, 2; 2001-356, ss. 1, 2; 2001-441, s. 1; 2001-487, ss. 50(a), 51; 2002-72, s. 19(b); 2002-98, ss. 1-3; 2003-397, s. 1; 2005-282, s. 1; 2005-349, ss. 1-3; 2006-253, s. 8; 2007-56, s. 4; 2007-382, ss. 2, 3; 2007-455, s. 1; 2007-493, s. 1; 2008-156, s. 1; 2009-274, s. 1; 2009-405, ss. 1, 4; 2009-416, ss. 1, 2.)

Subdivision (7b) Set Out Twice. — The first version of subdivision (7b) set out above is effective until March 31, 2010. The second version of subdivision (7b) set out above is effective March 31, 2010.

Cross References. — As to designation of an area of private property as a public vehicular area, see G.S. 20-219.4.

Editor's Note. — Subdivisions (0.1), (0.2) and (1) were redesignated as subdivisions (1a), (1b) and (1c) and the subunits of subdivision (33) were renumbered pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Subdivisions (48a) and (48b) were designated as such under the direction of the Revisor of Statutes.

Sections 20-138, 20-139, and 20-140(c), referred to in this section, were repealed by Session Laws 1983, c. 435, s. 23.

Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Session Laws 2007-382, s. 4, provides: "Section 1 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Section 3 of this act becomes effective August 1, 2007, and applies to all school buses acquired on or after that date. The remainder of this act is effective when it becomes law [August 19, 2007]."

Session Laws 2007-493, s. 33, provides in part, that prosecutions for offenses committed before August 30, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Effect of Amendments. — Session Laws 2007-382, s. 2, in the first sentence of subdivision (27)d4, inserted "plainly visible" before "words" and deleted "in letters at least 8 inches in height" following "front and rear" at the end of the sentence. For effective date and applicability, see Editor's note.

Session Laws 2007-382, s. 3, in the first sentence of subdivision (27)d4, inserted "that is painted primarily yellow below the roofline." For effective date and applicability, see Editor's note.

Session Laws 2007-455, s. 1, effective December 1, 2007, inserted "gated or non-gated" and inserted "or community" twice in subdivision (32)c.

Session Laws 2007-493, s. 1, effective August 30, 2007, substituted "Any offense set forth" for "Death by vehicle" in subdivision (24a)b. For applicability provisions, see Editor's note.

Session Laws 2008-156, s. 1, effective August 3, 2008, rewrote subdivision (12c); and added the last sentence in subdivision (45).

Session Laws 2009-274, s. 1, effective July 10, 2009, and applicable to all licenses expiring on or after that date, added subdivision (33c).

Session Laws 2009-405, ss. 1 and 4, effective October 1, 2009, added subdivision (15a) and rewrote subdivision (43).

Session Laws 2009-416, ss. 1, 2, effective March 31, 2010 and applicable to offenses committed on or after that date, added subdivision (4a)b 6 and added the language following "commercial motor vehicle" in subsection (7b).

Legal Periodicals. — For note discussing the definition of "driving" under the North Carolina Safe Roads Act, in light of State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985), see 64 N.C.L. Rev. 127 (1986).

CASE NOTES

Constitutionality. — For case reaffirming the constitutionality of G.S. 20-138.1(a)(2) and subdivision (33a) of this section, see State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

In construing a homeowners association's declaration of covenants, conditions and restrictions (CC&Rs), property owners' reliance on G.S. 20-4.01(32a) and (27)d2, and G.S. 20-354.2 (defining travel trailer, camping trailer, motor vehicle, and motor home or house car) was misplaced; the statutes were enacted between six and sixteen years after the association's CC&Rs (referring to campers and all similar property) were drafted and recorded. The statutory provisions were not material to the issue of the drafters' intent in 1985 when the CC&Rs were drafted and recorded. Schwartz v. Banbury Woods Homeowners Ass'n, — N.C. App. —, 675 S.E.2d 382, 2009 N.C. App. LEXIS 528 (2009).

Alcohol Concentration. — Police officer who had been issued a permit to perform chemical analysis under the authority of G.S. 20-139.1(b) by the Department of Human Resources was permitted by subdivision (0.2) of this section (now subdivision (1b)) to express alcohol concentration in terms of 210 liters of breath, as well as 100 milliliters of blood. State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985).

Business District. — As to what constituted a business district within the meaning of subdivision (1) of former G.S. 20-38, see Mitchell v. Melts, 220 N.C. 793, 18 S.E.2d 406 (1942); Hinson v. Dawson, 241 N.C. 714, 86 S.E.2d 585 (1955); Black v. Penland, 255 N.C. 691, 122 S.E.2d 504 (1961).

"Chemical analyst" for purposes of G.S. 20-139.1 includes a person who was validly licensed by the Department of Human Resources to perform chemical analyses immediately prior to the enactment of the Safe Roads Act. To hold otherwise would mean that an individual licensed to perform chemical analyses under one statute would automatically lose his license when the testing procedures are merely recodified in another statute. Obviously the legislature did not intend that result. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Driver. — Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under G.S. 20-138.1. Since "driver" is defined in this section simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984).

Although a distinction may have been made between driving and operating in prior case law and statutes regulating vehicles, no such distinction is supportable under this section since a "driver" is defined as an "operator." It is clear that the legislature intended the two words to be synonymous. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

"Commercial Motor Vehicle". — The defendant's contention that he did not violate this section because he was not driving a "commercial motor vehicle" was without merit; the tractor-trailer was a commercial vehicle within the statutory definition although the defendant was driving it for his own private use and although he had detached the trailer portion of the tractor-trailer. State v. Jones, 140 N.C. App. 691, 538 S.E.2d 228, 2000 N.C. App. LEXIS 1257 (2000).

Farm Tractor. — Farm tractors are not to be considered motor vehicles within the provisions of the Uniform Driver's License Act or the Motor Vehicle Safety and Financial Responsibility Act. Brown v. Fidelity & Cas. Co., 241 N.C. 666, 86 S.E.2d 433 (1955), decided under repealed § 20-226.

The Motor Vehicles Act expressly defines a "farm tractor" as a "motor vehicle." Therefore, an instruction imparting to a farm tractor and trailer on a highway special hazard status per se and rendering a motorist who collides with a farm tractor and trailer on a highway negligent per se, regardless of the circumstances or the conduct of the tractor-trailer operator constituted prejudicial error. Davis v. Gamble, 55 N.C. App. 617, 286 S.E.2d 629 (1982).

Construing the definitions of "farm tractor" and "vehicle" together in pari materia, it is apparent that the General Assembly intended that while farm tractors are motor implements of husbandry, they were vehicles within the meaning of former G.S. 20-138 when operated upon a highway by one under the influence of intoxicating liquor or narcotic drugs. State v. Green, 251 N.C. 141, 110 S.E.2d 805 (1959).

Trucks. — Trucks, even if used for private purposes, are not private passenger type autos. Harleysville Mut. Ins. Co. v. Packer, 60 F.3d 1116 (4th Cir. 1995).

Highway — Construction of Subdivision (13). — The definition of "highway" in subdivision (13) is to be construed so as to give its terms their plain and ordinary meaning. Smith v. Powell, 293 N.C. 342, 238 S.E.2d 137 (1977).

The legislature has provided that, unless the context requires otherwise, the word "highway" is to be given the same connotation in all of the provisions of Chapter 20, whether they be penal, remedial or otherwise. Thus, the well known principles of statutory construction that a penal statute is to be strictly construed and a statute designed to promote safety is to be liberally construed have no application. Smith v. Powell, 293 N.C. 342, 238 S.E.2d 137 (1977).

Same — "Highway" Distinguished from Roadway. — The definitions of "highway" and "roadway," considered together, show that the legislature in defining "highway" intended to make it clear that the entire "width" between the right-of-way lines is included in a "highway" as distinguished from a "roadway." Smith v. Powell, 293 N.C. 342, 238 S.E.2d 137 (1977).

Same — Definition of "Highway" Is Concerned with Width, Not Depth. — While it is true that a "highway" or a "street" is not limited to its surface so far as the right of the State to use, maintain and protect it from damage and private use are concerned, and in this sense, it includes not only the entire thickness of the pavement and the prepared base upon which it rests but also so much of the depth as may not unfairly be used as streets are used for the laying therein of drainage systems and conduits for sewer, water and other services, nevertheless, the primary concern of the legislature in defining "highway" as used in Chapter 20 was with the "width," not the depth. "Width" means "the lineal extent of a thing from side to side." Smith v. Powell, 293 N.C. 342, 238 S.E.2d 137 (1977).

Same — Portion of Sidewalk as Highway. — The portion of a sidewalk between a street and a filling station, open to the use of the public as a matter of right for the purposes of vehicular traffic, was a "highway" within the meaning of former G.S. 20-138, prohibiting drunken driving. State v. Perry, 230 N.C. 361, 53 S.E.2d 288 (1949).

Same — Area beneath Highway Bridge Not "Highway". — A petitioner who drove a motor vehicle only within the limits of the area beneath a highway bridge did not drive on a "highway" as that term is used in G.S. 20-16.2. Smith v. Powell, 293 N.C. 342, 238 S.E.2d 137 (1977).

Same — Emergency strip adjacent to interstate highways falls within the literal language of the definition of "highway" as contained in this section. State v. Kelley, 65 N.C. App. 159, 308 S.E.2d 720 (1983).

Intersection. — With reference to the right-of-way as between two vehicles approaching and entering an intersection, the law of this State makes no distinction between a "T" intersection and one at which the two highways cross each other completely. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Where one public highway joins another, but does not cross it, the point where they join is an intersection of public highways. Goss v. Williams, 196 N.C. 213, 145 S.E. 169 (1928).

When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, it should tell the jury how to find the intersection of the streets as fixed by statute, and how, when the motorist reaches the intersection, he is required to drive in making a left turn. Pearsall v. Duke Power Co., 258 N.C. 639, 129 S.E.2d 217 (1963).

Motorcycle. — The definition of the term "motorcycle" in former G.S. 20-38 did not describe the "mailster," a class of motor vehicle generally known as a "motor scooter." LeCroy v. Nationwide Mut. Ins. Co., 251 N.C. 19, 110 S.E.2d 463 (1959).

The statutory definition of the term "motorcycle" has no application in an action based on an insurance contract's interpretation of the word "automobile." LeCroy v. Nationwide Mut. Ins. Co., 251 N.C. 19, 110 S.E.2d 463 (1959).

Statutory definition cited in Anderson v. Life & Cas. Ins. Co., 197 N.C. 72, 147 S.E. 693 (1929), holding that the expression "motor-driven car" in an insurance policy excluded a motorcycle.

Electric Scooter Fell Within Statutory Definition of Vehicle. — Defendant's electric scooter, which was not self-balancing, with its two wheels in tandem, and which did not fall within the two statutory exceptions from a vehicle under G.S. 20-138.1(e) with regard to horses, bicycles, and lawnmowers or G.S. 20-4.01(49) as to transportation for a person with a mobility impairment, fell within the legislature's definition of vehicle in G.S. 20-4.01(49) and, because the evidence at trial showed that his breath alcohol concentration following arrest was 0.13, there was sufficient evidence to uphold defendant's conviction for impaired driving under G.S. 20- 138.1. State v. Crow, 175 N.C. App. 119, 623 S.E.2d 68, 2005 N.C. App. LEXIS 2747 (2005).

Low-boy trailer and Mack truck were not private passenger motor vehicles as they did not have a pickup body and were not delivery sedans nor panel trucks. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

A mobile home is a motor vehicle and is subject to the mandatory provisions of the statutes relating to the registration of motor vehicles in this State. King Homes, Inc. v. Bryson, 273 N.C. 84, 159 S.E.2d 329 (1968).

It is clear under North Carolina law that a mobile home is a "motor vehicle" for purposes of the statutes dealing with registration and ownership of motor vehicles. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Mobile Home Is a Motor Vehicle for Purposes of Perfecting Security Interest. — Plaintiff's argument that owner no longer intended to operate her mobile home upon the highway did not nullify defendant's properly perfected security interest in the mobile home. Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251, cert. denied, 330 N.C. 197, 412 S.E.2d 59 (1991).

Modular Home. — Although the title to a modular home is initially acquired through a bill of sale, once installed title must pass by way of a real property deed unlike a mobile home or trailer which passes by transfer of a certificate of origin and motor vehicle title. Briggs v. Rankin, 127 N.C. App. 477, 491 S.E.2d 234 (1997), aff'd, 348 N.C. 686, 500 S.E.2d 663 (1998).

Offense Involving Impaired Driving — Similar Offense in Another Jurisdiction. — Although the definitions of "impairment" under North Carolina and New York laws are not identical and the statutes do not "mirror" one another, they are "substantially equivalent"; consequently, the trial court did not err in determining that defendant's prior conviction under New York law was a grossly aggravating factor in sentencing him under North Carolina law. State v. Parisi, 135 N.C. App. 222, 519 S.E.2d 531 (1999).

Operator includes a person in the driver's seat of a motor vehicle when the engine is running. State v. Carter, 15 N.C. App. 391, 190 S.E.2d 241 (1972).

In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under subdivision (25). State v. Turner, 29 N.C. App. 163, 223 S.E.2d 530 (1976).

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under G.S. 20-138.1. Since "driver" is defined in this section simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984).

A horseback rider is an "operator" who is in "control of a vehicle which is in motion" where the horse is ridden upon a street, highway or public vehicular area. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Evidence held sufficient for a reasonable jury to infer that defendant, who was found asleep in driver's seat in car which had run off the road and into a fence, was under the influence of an impairing substance when he drove the vehicle. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Owner. — This section defines "owner" and former G.S. 20-279.1 defined "owner" in essentially the same way. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

A defendant who advanced money for the purchase of a used car as security took a title-retaining contract on the vehicle and permitted its delivery to the purchasers, one of whom was operating it when an accident occurred, could not be liable to the persons injured, since a conditional vendee, lessee, or mortgagor of a motor vehicle is deemed to be the owner, and liability on the part of the defendant could arise only by application of the doctrine of respondeat superior. Such facts do not show the necessary relationship. High Point Sav. & Trust Co. v. King, 253 N.C. 571, 117 S.E.2d 421 (1960).

Where the owner of trucks leased them to another corporation under an agreement requiring lessor to carry insurance and maintain the vehicles and giving lessee control over the operation of the trucks with right to use same exclusively for the transportation and delivery of lessee's goods, the lessor was not a contract carrier within the meaning of the statutes as they stood in 1949, since the lessor merely leased its vehicles and was not a carrier of any kind, and lessee was solely a private carrier, and therefore lessor was not liable for additional assessment at the "for-hire" rates under the statute. Equipment Fin. Corp. v. Scheidt, 249 N.C. 334, 106 S.E.2d 555 (1959).

Where the vendee paid the entire purchase price, had exclusive possession and use of the vehicle, obtained the insurance coverage for it, and paid the premium therefor, this sufficed to give him a clear equitable interest in the vehicle, and that equitable interest sufficed, under the particular facts and circumstances, to make him the "owner" of the vehicle within the coverage intent of the policy, interpreted in light of the purpose and intent of Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

Except under special circumstances not present in this case, the statute limits the definition of the word "owner" to the person holding legal title. Jenkins v. Aetna Cas. & Sur. Co., 324 N.C. 394, 378 S.E.2d 773 (1989).

Where evidence established that buyer paid four hundred dollars ($400.00) cash as the total price for a car and took immediate possession of the vehicle, but never received the certificate of title, buyer was not the "owner" of the car as that term is defined in G.S. 20-4.01(26); therefore, provision in insurance policy excluding coverage for liability arising from the use of a vehicle "owned" by buyer did not apply. Jenkins v. Aetna Cas. & Sur. Co., 324 N.C. 394, 378 S.E.2d 773 (1989).

Although a vehicle's owner gave the vehicle to her son, she never transferred title, and thus at the time of a later accident the owner remained the legal owner of the vehicle; a trial court erred in holding that the owner's insurance policy terminated when the son's policy was issued on the same car because the automatic termination clause in the owner's policy's only applied if the owner obtained other insurance, and since the owner's policy and the son's policy were procured by different persons, the owner's policy did not automatically terminate. Progressive Am. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 184 N.C. App. 688, 647 S.E.2d 111, 2007 N.C. App. LEXIS 1625 (2007).

For purposes of tort law and liability insurance coverage, no ownership passes to the purchaser of a motor vehicle which requires registration until: (1) The owner executes, in the presence of a person authorized to administer oaths, an assignment and warranty of title on the reverse of the certificate of title, including the name and address of the transferee; (2) there is an actual or constructive delivery of the motor vehicle; and (3) the duly assigned certificate of title is delivered to the transferee (or lienholder in secured transactions). Jenkins v. Aetna Cas. & Sur. Co., 324 N.C. 394, 378 S.E.2d 773 (1989).

Since actual title had not passed, an insurer had to provide coverage to its insured while driving a non-owned vehicle, even though the insured was in the process of buying the vehicle, as North Carolina required actual title to pass for ownership under G.S. 20-4.01(26); the insurer was responsible to a passenger who was injured in a collision with a non-owned vehicle being driven by the insured. Hernandez v. Nationwide Mut. Ins. Co., 171 N.C. App. 510, 615 S.E.2d 425, 2005 N.C. App. LEXIS 1360 (2005), cert. denied, 360 N.C. 63, 621 S.E.2d 624 (2005).

Definition of "Owner" Applies to Article 9A. — The definition of "owner" in subdivision (26) of this section applies throughout this Chapter, and thus to Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953, unless the context otherwise requires. It thus must be read into every liability insurance policy within the purview of Article 9A, unless the context otherwise requires. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

And Deletion of "Owner" from § 20-279.1 Was Merely to Avoid Repetition. — Prior to 1973 the definition of "owner" appeared in G.S. 20-279.1(9) (repealed in 1973), which was applicable solely to Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953. The General Assembly placed this definition in this section. The apparent purpose was to eliminate unnecessary repetition of this definition in separate articles of this Chapter, not to make the definition inapplicable to Article 9A. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

One who does not hold legal title to a vehicle cannot obtain owner's liability insurance thereon. Nationwide Mut. Ins. Co. v. Edwards, 67 N.C. App. 1, 312 S.E.2d 656 (1984).

Public Vehicular Area. — Evidence held to permit a finding that at the time in question portion of park grounds legally in use as a parking lot was a "public vehicular area" within the meaning and intent of that phrase as used in subdivision (32), so as to permit a conviction under G.S. 20-138.1(a) for impaired driving thereon. State v. Carawan, 80 N.C. App. 151, 341 S.E.2d 96, cert. denied, 317 N.C. 337, 346 S.E.2d 141 (1986).

Evidence held sufficient to permit a finding that handicapped or wheelchair ramp in motel parking lot in front of motel door upon which most of defendant's car had been stopped was part of a "public vehicular area" within the meaning and intent of that phrase as used in subdivision (32). State v. Mabe, 85 N.C. App. 500, 355 S.E.2d 186 (1987).

Area where an accident between plaintiff and defendant's truck occurred was a public vehicular area and not a roadway. The accident occurred in the traffic lane of a parking lot generally open to and used by the public for vehicular traffic upon the premises of a business establishment which provided parking space for its customers. Although the lot was held open for use by the public, there was no evidence that the general public had a legally enforceable right to use the lot. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

Street in mobile home park, owned by one individual who had divided the property into lots for lease, that was not marked as private, and was available for use by residents, their guests and other visitors, was a public vehicular area within the meaning of subsection (32). State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994).

Where the evidence established that a private club was licensed by the state to serve alcohol to guests of members as well as to members themselves, the club's parking lot could be used as a thoroughfare by members of the general public, there were no signs posted in the club's parking lot prohibiting the public from parking there and no signs posted stating that the parking lot was private property, nor was there any security or membership cards allowing members exclusive access to the parking lot, the evidence was sufficient to support a peremptory instruction that the club's parking lot was a "public vehicular area" as a matter of law. State v. Snyder, 343 N.C. 61, 468 S.E.2d 221 (1996).

A sign prohibiting loitering in a parking lot did not change the nature of the property; thus, a car wash was still a business providing parking for its customers, and as such, the premises was a "public vehicular area" under this section. State v. Robinette, 124 N.C. App. 212, 476 S.E.2d 387 (1996).

"Reportable Crash." — Defendant was properly convicted of giving false information for a motor vehicle crash report in violation of G.S. 20-279.31(b) because, inter alia, an accident in which defendant was involved was a "reportable crash," under the provisions of G.S. 20-4.01(33b). State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

Residential District. — For cases construing earlier statutory definitions of "residential district," see Reid v. City Coach Co., 215 N.C. 469, 2 S.E.2d 578, 123 A.L.R. 140 (1939); Mitchell v. Melts, 220 N.C. 793, 18 S.E.2d 406 (1942); Goddard v. Williams, 251 N.C. 128, 110 S.E.2d 820 (1959), overruled in part, Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996).

Revocation. — The contention that a revocation remains in effect not only throughout the period stated in the order of revocation but also until the person whose license was revoked applies for a restoration of his license and pays the restoration fee required is contrary to the definition of "revocation" in this section. Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver's license for 10 days, petitioner's license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

When a person's driver's license is suspended or revoked, it is the surrendering of the privilege to drive, not the license card itself, that is of significance. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

As the terms "revoked" and "suspended" with respect to defendant's driver's license were used interchangeably in statutes pursuant to G.S. 20-4.01(47), defendant's claim that there was a fatal variance between the indictment, which indicated that defendant's license was revoked, and the proof offered at trial that defendant's license was suspended, lacked merit. State v. Lloyd, 187 N.C. App. 174, 652 S.E.2d 299, 2007 N.C. App. LEXIS 2253 (2007).

Under Influence of Impairing Substance. — The offense of impaired driving is proven by evidence that defendant drove a vehicle on any highway in this State while his physical or mental faculties, or both, were "appreciably impaired by an impairing substance." State v. George, 77 N.C. App. 580, 335 S.E.2d 768 (1985).

Where the tortfeasor rear-ended the injured party's vehicle, the trial court erred in granting the tortfeasor's motion for summary judgment on the injured party's punitive damages claim, because the tortfeasor failed to show that he was not under the influence of an impairing substance under G.S. 20-4.01(14a), where he admitted to drinking two beers and taking three prescription drugs before the accident; the tortfeasor offered no evidence that the prescription drugs, mixed with alcohol, were not an impairing substance. Byrd v. Adams, 152 N.C. App. 460, 568 S.E.2d 640, 2002 N.C. App. LEXIS 1067 (2002), cert. denied, 356 N.C. 433, 568 S.E.2d 640 (2002).

Admissible trial evidence established beyond a reasonable doubt that defendant was driving a vehicle while under the influence of alcohol in violation of G.S. 20-138.1; evidence showing that defendant was under the influence of alcohol included, inter alia: (1) weaving; (2) erratic braking; (3) driving 70 MPH in a 50 MPH zone; (4) the strong odor of alcohol on defendant's person; (5) defendant's unsteady balance; and (6) his statement that he had consumed alcohol. United States v. Van Hazel, 468 F. Supp. 2d 792, 2006 U.S. Dist. LEXIS 94757 (E.D.N.C. 2006).

Vehicles — Legislative Intent. — The North Carolina legislature intended the provisions of the traffic laws of North Carolina applicable to the drivers of "vehicles" to apply to horseback riders irrespective of whether a horse is a vehicle. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Same — Bicycle as Vehicle. — A bicycle is a vehicle and its rider is a driver within the meaning of the motor vehicle law. Low v. Futrell, 271 N.C. 550, 157 S.E.2d 92 (1967); Sadler v. Purser, 12 N.C. App. 206, 182 S.E.2d 850 (1971); Townsend v. Frye, 30 N.C. App. 634, 228 S.E.2d 56, cert. denied, 291 N.C. 178, 229 S.E.2d 689 (1976).

The operation of a bicycle upon a public highway is governed by the rules governing motor vehicles insofar as the nature of the vehicle permits. Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966).

A bicycle is deemed a vehicle, and the rider of a bicycle upon the highway is subject to the applicable provisions of the statutes relating to motor vehicles. Van Dyke v. Atlantic Greyhound Corp., 218 N.C. 283, 10 S.E.2d 727 (1940).

A bicycle is a vehicle, and is subject to the provisions of Article 3 of this Chapter, except those which by their nature can have no application. Tarrant v. Pepsi-Cola Bottling Co., 221 N.C. 390, 20 S.E.2d 565 (1942); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

In interpreting an underinsured motorist excess provision, a bicycle involved in an accident with a car was considered to be a vehicle pursuant to G.S. 20-4.01(49), since it was operated upon a highway. Sitzman v. Gov't Emples. Ins. Co., 182 N.C. App. 259, 641 S.E.2d 838, 2007 N.C. App. LEXIS 585 (2007).

Same — Handcart. — A handcart, being moved solely by human power, is excluded from the category of vehicles defined in subdivision (38) of former G.S. 20-38 (now subdivision (49) of this section). Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948).

Applied in State v. Springs, 26 N.C. App. 757, 217 S.E.2d 200 (1975); State v. Lesley, 29 N.C. App. 169, 223 S.E.2d 532 (1976); Williams v. Wachovia Bank & Trust Co., 292 N.C. 416, 233 S.E.2d 589 (1977); Smith v. Powell, 32 N.C. App. 563, 232 S.E.2d 863 (1977); State v. Bowen, 67 N.C. App. 512, 313 S.E.2d 196 (1984); Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741 (1985); Roseboro Ford, Inc. v. Bass, 77 N.C. App. 363, 335 S.E.2d 214 (1985); Continental Tel. Co. v. Gunter, 99 N.C. App. 741, 394 S.E.2d 228 (1990); Hoover v. State Farm Mut. Ins. Co., 156 N.C. App. 418, 576 S.E.2d 396, 2003 N.C. App. LEXIS 116 (2003); Pa. Nat'l Mut. Ins. Co. v. Strickland, 178 N.C. App. 547, 631 S.E.2d 845, 2006 N.C. App. LEXIS 1564 (2006); Batts v. Lumbermen's Mut. Cas. Ins. Co., — N.C. App. —, 665 S.E.2d 578, 2008 N.C. App. LEXIS 1613 (2008); State v. Narron, — N.C. App. —, 666 S.E.2d 860, 2008 N.C. App. LEXIS 1758 (2008).

Cited in McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487; State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610; State v. Bradley, 32 N.C. App. 666, 233 S.E.2d 603 (1977); Harper v. Peters, 42 N.C. App. 62, 255 S.E.2d 791 (1979); Lupo v. Powell, 44 N.C. App. 35, 259 S.E.2d 777 (1979); Oroweat Employees Credit Union v. Stroupe, 48 N.C. App. 338, 269 S.E.2d 211 (1980); State v. Ray, 54 N.C. App. 473, 283 S.E.2d 823 (1981); State v. Bost, 55 N.C. App. 612, 286 S.E.2d 632 (1982); Perry v. Aycock, 68 N.C. App. 705, 315 S.E. 791 (1984); State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984); State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984); State v. Shuping, 312 N.C. 421, 323 S.E.2d 350 (1984); Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986); Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986); Brooks v. Pembroke City Jail, 722 F. Supp. 1294 (E.D.N.C. 1989); North Carolina Farm Bureau Mut. Ins. Co. v. Warren, 326 N.C. 444, 390 S.E.2d 138 (1990); Alberti v. Manufactured Homes, Inc., 329 N.C. 727, 407 S.E.2d 819 (1991); State Auto. Mut. Ins. Co. v. Hoyle, 106 N.C. App. 199, 415 S.E.2d 764 (1992); State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); State v. Crawford, 125 N.C. App. 279, 480 S.E.2d 422 (1997); Wooten v. Town of Topsail Beach, 127 N.C. App. 739, 493 S.E.2d 285 (1997); Butler v. Green Tree Fin. Servicing Corp. (In re Wester), 229 Bankr. 348 (Bankr. E.D.N.C. 1998); State v. Clapp, 135 N.C. App. 52, 519 S.E.2d 90 (1999); Halter v.

J.C. Penney Life Ins. Co., — F. Supp. 2d —, 1999 U.S. Dist. LEXIS 21386 (M.D.N.C. Nov. 30, 1999); Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512, 2000 N.C. App. LEXIS 496 (2000); State v. Smith, 139 N.C. App. 209, 533 S.E.2d 518, 2000 N.C. App. LEXIS 887 (2000); Clontz v. St. Mark's Evangelical Lutheran Church, 157 N.C. App. 325, 578 S.E.2d 654, 2003 N.C. App. LEXIS 537 (2003); Erwin v. Tweed, 159 N.C. App. 579, 583 S.E.2d 717, 2003 N.C. App. LEXIS 1532 (2003); State v. Winslow, 169 N.C. App. 137, 609 S.E.2d 463, 2005 N.C. App. LEXIS 533 (2005); State v. Jones, 186 N.C. App. 405, 651 S.E.2d 589, 2007 N.C. App. LEXIS 2200 (2007); Great American Ins. Co. v. Freeman, — N.C. App. —, 665 S.E.2d 536, 2008 N.C. App. LEXIS 1612 (2008).

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Trailers designed to run upon the highways and pulled by a self-propelled vehicle are motor vehicles for the purposes of this Chapter. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992). State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985).

"Public vehicular area" includes streets leading into privately owned trailer parks which rent, lease and sell individual lots. See opinion of Attorney General to Mr. Henry A. Harkey, Assistant District Attorney, 45 N.C.A.G. 284 (1976).

The parking lot of the restaurant is within the definition of "public vehicular area" under subdivision (32) of this section when the restaurant is closed. See opinion of Attorney General to Mr. James C. Yeatts, III, Assistant District Attorney, 17-B Judicial District, 52 N.C.A.G. 6 (1982).

Section 20-217, a safety statute designed to prevent the passing of a school bus displaying its mechanical stop signal while receiving or discharging passengers, has no application to a "public vehicular area." See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, — N.C.A.G. — (Mar. 9, 1987).

Vehicle which is constructive total loss now defined as salvage vehicle under this section. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, — N.C.A.G. — (May 20, 1988).

As to treatment by insurer of wrecked vehicle as constructive total loss, thereby declaring it a total loss, so as to harmonize subdivision (33)(d) and G.S. 20-109.1(a)(1). See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, — N.C.A.G. — (May 20, 1988).

New definition of salvage motor vehicle enacted by Session Laws 1987, c. 607 in subdivision (33)(d) and § 20-109.1 must be read in pari materia. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, — N.C.A.G. — (May 20, 1988).

Private carriers operated by drivers employed in logging operations are entitled to the exemption for "farm" vehicles under § 20-37.16(e)(3) if agricultural or forest products being transported were raised and grown by farmer/forester and he does not engage in business of buying products for resale. Then he and his employees could transport such forest products within 150 miles of farm in vehicles not used in common or contract motor carrier operations without obtaining a commercial driver's license. Conversely, if forest products were not raised and grown by forester, or he engages in buying forest products for resale, transporting of those products by him or his employees would not be exempt from commercial driver's license requirements for, as to those forest products, forester was not a farmer. See opinion of Attorney General to Rep. Beverly M. Purdue, 3rd District: Craven, Lenoir, Pamlico Counties, 60 N.C.A.G. 30 (1990).

ARTICLE 1A.

Reciprocity Agreements as to Registration and Licensing.

§ 20-4.1. Declaration of policy.

It is the policy of this State to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this State. (1961, c. 642, s. 1.)

§ 20-4.2. Definitions.

As used in this Article:

(1) "Commercial vehicle" means any vehicle which is operated in furtherance of any commercial enterprise.

(2) "Commissioner" means the Commissioner of Motor Vehicles of North Carolina.

(3) "Division" means the Division of Motor Vehicles of North Carolina.

(4) "Jurisdiction" means and includes a state, district, territory or possession of the United States, a foreign country and a state or province of a foreign country.

(5) "Properly registered," as applied to place of registration, means:

a. The jurisdiction where the person registering the vehicle has his legal residence, or

b. In the case of a commercial vehicle, including a leased vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business, or

c. In the case of a commercial vehicle, including leased vehicles, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

d. In case of doubt or dispute as to the proper place of registration of a vehicle, the Division shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. (1961, c. 642, s. 1; 1975, c. 716, s. 5; 1979, c. 470, s. 2.)

CASE NOTES

Applied in Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

§ 20-4.3. Commissioner may make reciprocity agreements, arrangements or declarations.

The Commissioner of Motor Vehicles shall have the authority to execute or make agreements, arrangements or declarations to carry out the provisions of this Article. (1961, c. 642, s. 1.)

§ 20-4.4. Authority for reciprocity agreements; provisions; reciprocity standards.

(a) The Commissioner may enter into an agreement or arrangement for interstate or intrastate operations with the duly authorized representatives of another jurisdiction, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction and for which evidence of compliance is supplied, benefits, privileges and exemptions from the payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this State. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this State when operated upon highways of such other jurisdiction shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this State. Each such agreement or arrangement shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

(b) When the Commissioner enters into a reciprocal registration agreement or arrangement with another jurisdiction which has a motor vehicle tax, license or fee which is not subject to waiver by a reciprocity agreement, the Commissioner is empowered and authorized to provide as a condition of the agreement or arrangement that owners of vehicles licensed in such other jurisdiction shall pay some equalizing tax or fee to the Division. The failure of any owner or operator of a vehicle to pay the taxes or fees provided in the agreement or arrangement shall prohibit them from receiving any benefits therefrom and they shall be required to register their vehicles and pay taxes as if there was no agreement or arrangement. (1961, c. 642, s. 1; 1971, c. 588; 1975, c. 716, s. 5.)

§ 20-4.5. Base-state registration reciprocity.

An agreement or arrangement entered into, or a declaration issued under the authority of this Article may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in some other state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction. (1961, c. 642, s. 1.)

§ 20-4.6: Repealed by Session Laws 1997-122, s. 1.

§ 20-4.7. Extension of reciprocal privileges to lessees authorized.

An agreement or arrangement entered into, or a declaration issued under the authority of this Article, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration. (1961, c. 642, s. 1.)

§ 20-4.8. Automatic reciprocity, when.

On and after July 1, 1961, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this Article, any vehicle properly registered or licensed in such other jurisdiction and for which evidence of compliance supplied shall receive, when operated in this State, the same exemptions, benefits and privileges granted by such other jurisdiction to vehicles properly registered in this State. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate operations. (1961, c. 642, s. 1.)

§ 20-4.9. Suspension of reciprocity benefits.

Agreements, arrangements or declarations made under the authority of this Article may include provisions authorizing the Division to suspend or cancel the exemptions, benefits or privileges granted thereunder to a vehicle which is in violation of any of the conditions or terms of such agreements, arrangements or declarations or is in violation of the laws of this State relating to motor vehicles or rules and regulations lawfully promulgated thereunder. (1961, c. 642, s. 1; 1975, c. 716, s. 5.)

§ 20-4.10. Agreements to be written, filed and available for distribution.

All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the Commissioner. Copies thereof shall be made available by the Commissioner upon request and upon payment of a fee therefor in an amount necessary to defray the costs of reproduction thereof. (1961, c. 642, s. 1.)

§ 20-4.11. Reciprocity agreements in effect at time of Article.

All reciprocity registration agreements, arrangements and declarations relating to vehicles in force and effect July 1, 1961, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements. (1961, c. 642, s. 1.)

§ 20-4.12. Article part of and supplemental to motor vehicle registration law.

This Article shall be, and construed as, a part of and supplemental to the motor vehicle registration law of this State. (1961, c. 642, s. 1.)

§§ 20-4.13 through 20-4.17: Reserved for future codification purposes.

ARTICLE 1B.

Reciprocal Provisions as to Arrest of Nonresidents.

§ 20-4.18. Definitions.

Unless the context otherwise requires, the following words and phrases, for the purpose of this Article, shall have the following meanings:

(1) Citation. — Any citation, summons, ticket, or other document issued by a law-enforcement officer for the violation of a traffic law, ordinance, rule or regulation.
(2) Collateral or Bond. — Any cash or other security deposited to secure an appearance following a citation by a law-enforcement officer.
(3) Repealed by Session Laws 1979, c. 667, s. 2.
(4) Nonresident. — A person who holds a license issued by a reciprocating state.
(5) Personal Recognizance. — An agreement by a nonresident to comply with the terms of the citation issued to the nonresident.
(6) Reciprocating State. — Any state or other jurisdiction which extends by its laws to residents of North Carolina substantially the rights and privileges provided by this Article.

(7) State. — The State of North Carolina. (1973, c. 736; 1979, c. 667, s. 2; 1981, c. 508; 1999-452, s. 6.)

§ 20-4.19. Issuance of citation to nonresident; officer to report noncompliance.

(a) Notwithstanding other provisions of this Chapter, a law-enforcement officer observing a violation of this Chapter or other traffic regulation by a nonresident shall issue a citation as appropriate and shall not, subject to the provisions of subsection (b) of this section, require such nonresident to post collateral or bond to secure appearance for trial, but shall accept such nonresident's personal recognizance; provided, however, that the nonresident shall have the right upon request to post collateral or bond in a manner provided by law and in such case the provisions of this Article shall not apply.

(b) A nonresident may be required to post collateral or bond to secure appearance for trial if the offense is one which would result in the suspension or revocation of a person's license under the laws of this State.

(c) Upon the failure of the nonresident to comply with the citation, the clerk of court shall report the noncompliance to the Division. The report of noncompliance shall clearly identify the nonresident; describe the violation, specifying the section of the statute, code, or ordinance violated; indicate the location and date of offense; and identify the vehicle involved. (1973, c. 736; 1975, c. 716, s. 5; 1991, c. 682, s. 1; 1999-452, s. 7.)

§ 20-4.20. Division to transmit report to reciprocating state; suspension of license for noncompliance with citation issued by reciprocating state.

(a) Upon receipt of a report of noncompliance, the Division shall transmit a certified copy of such report to the official in charge of the issuance of licenses in the reciprocating state in which the nonresident resides or by which he is licensed.

(b) When the licensing authority of a reciprocating state reports that a person holding a North Carolina license has failed to comply with a citation issued in such state, the Commissioner shall forthwith suspend such person's license. The order of suspension shall indicate the reason for the order, and shall notify the person that his license shall remain suspended until he has furnished evidence satisfactory to the Commissioner that he has complied with the terms of the citation which was the basis for the suspension order by appearing before the tribunal to which he was cited and complying with any order entered by said tribunal.

(c) A copy of any suspension order issued hereunder may be furnished to the licensing authority of the reciprocating state.

(d) The Commissioner shall maintain a current listing of reciprocating states hereunder. Such lists shall from time to time be disseminated among the appropriate departments, divisions, bureaus, and agencies of this State; the principal law-enforcement officers of the several counties, cities, and towns of this State; and the licensing authorities in reciprocating states.

(e) The Commissioner shall have the authority to execute or make agreements, arrangements, or declarations to carry out the provisions of this Article. (1973, c. 736; 1975, c. 716, s. 5; 1979, c. 104.)

CASE NOTES

G.S. 20-25 creates no right to appeal a suspension under G.S. 20-4.20(b). The General Assembly simply has not yet provided for appeals from suspension under G.S. 20-4.20(b).

Palmer v. Wilkins, 73 N.C. App. 171, 325 S.E.2d 697 (1985).

Cited in Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512, 2000 N.C. App. LEXIS 496 (2000).

ARTICLE 1C.

Drivers License Compact.

§ 20-4.21. Title of Article.

This Article is the Drivers License Compact and may be cited by that name. (1993, c. 533, s. 1.)

§ 20-4.22. Commissioner may make reciprocity agreements, arrangements, or declarations.

The Commissioner may execute or make agreements, arrangements, or declarations to implement this Article. (1993, c. 533, s. 1.)

§ 20-4.23. Legislative findings and policy.

(a) Findings. — The General Assembly and the states that are members of the Drivers License Compact find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) The violation of a law or an ordinance relating to the operation of a motor vehicle is evidence that the violator engages in conduct that is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(b) Policy. — It is the policy of the General Assembly and of each of the states that is a member of the Drivers License Compact to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations of a member state relating to the operation of motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and the eligibility for a license to drive more just and equitable by making consideration of overall compliance with motor vehicle laws, ordinances, and administrative rules and regulations a condition precedent to the continuance or issuance of any license that authorizes the holder of the license to operate a motor vehicle in a member state. (1993, c. 533, s. 1.)

§ 20-4.24. Reports of convictions; effect of reports.

(a) Reports. — A state that is a member of the Drivers License Compact shall report to another member state of the compact a conviction for any of the following:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle.

(2) Driving a motor vehicle while impaired.

(3) A felony in the commission of which a motor vehicle was used.

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

If the laws of a member state do not describe the listed violations in precisely the words used in this subsection, the member state shall construe the descriptions to apply to offenses of the member state that are substantially similar to the ones described.

A state that is a member of the Drivers License Compact shall report to another member state of the compact a conviction for any other offense or any other information concerning convictions that the member states agree to report.

(b) Effect. — A state that is a member of the Drivers License Compact shall treat a report of a conviction received from another member state of the compact as a report of the conduct that resulted in the conviction. For a conviction required to be reported under subsection (a), a member state shall give the same effect to the report as if the conviction had occurred in that state. For a conviction that is not required to be reported under subsection (a), a member state shall give the effect to the report that is required by the laws of that state. G.S. 20-23 governs the effect in this State of convictions that are not required to be reported under subsection (a). (1993, c. 533, s. 1.)

§ 20-4.25. Review of license status in other states upon application for license in member state.

Upon application for a license to drive, the licensing authority of a state that is a member of the Drivers License Compact must determine if the applicant has ever held, or currently holds, a license to drive issued by another member state. The licensing authority of the member state where the application is made may not issue the applicant a license to drive if:

(1) The applicant has held a license, but it has been revoked for a violation and the revocation period has not ended. If the revocation period is for more than one year and it has been at least one year since the license was revoked, the licensing authority may allow the applicant to apply for a new license if the laws of the licensing authority's state permit the application.

(2) The applicant currently holds a license to drive issued by another member state and does not surrender that license. (1993, c. 533, s. 1.)

§ 20-4.26. Effect on other laws or agreements.

Except as expressly required by the provisions of this Article, this Article does not affect the right of a member state to the Drivers License Compact to apply any of its other laws relating to licenses to drive to any person or circumstance, nor does it invalidate or prevent any driver license agreement or other cooperative arrangement between a member state and a state that is not a member. (1993, c. 533, s. 1.)

§ 20-4.27. Effect on other State driver license laws.

To the extent that this Article conflicts with general driver licensing provisions in this Chapter, this Article prevails. Where this Article is silent, the general driver licensing provisions apply. (1993, c. 533, s. 1.)

§ 20-4.28. Administration and exchange of information.

The head of the licensing authority of each member state is the administrator of the Drivers License Compact for that state. The administrators, acting jointly, have the power to formulate all necessary procedures for the exchange of information under this compact. The administrator of each member state shall furnish to the administrator of each other member state any information or documents reasonably necessary to facilitate the administration of this compact. (1993, c. 533, s. 1.)

§ 20-4.29. Withdrawal from Drivers License Compact.

A member state may withdraw from the Drivers License Compact. A withdrawal may not become effective until at least six months after the heads of all other member states have received notice of the withdrawal. Withdrawal does not affect the validity or applicability by the licensing authorities of states remaining members of the compact of a report of a conviction occurring prior to the withdrawal. (1993, c. 533, s. 1.)

§ 20-4.30. Construction and severability.

This Article shall be liberally construed to effectuate its purposes. The provisions of this Article are severable; if any part of this Article is declared to be invalid by a court, the invalidity does not affect other parts of this Article that can be given effect without the invalid provision. If the Drivers License Compact is declared invalid by a court in a member state, the compact remains in full force and effect in the remaining member states and in full force and effect for all severable matters in that member state. (1993, c. 533, s. 1.)

ARTICLE 2.

Uniform Driver's License Act.

§ 20-5. Title of Article.

This Article may be cited as the Uniform Driver's License Act. (1935, c. 52, s. 31.)

CASE NOTES

Legislative Purpose. — This Article was designed under the police power in furtherance of the safety of the users of the State's highways. Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

And Authority. — The General Assembly has full authority to prescribe the conditions upon which licenses to operate automobiles are issued, and to designate the agency through which, and the conditions upon which licenses, when issued shall be suspended or revoked. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

Division Given Exclusive Power to Issue, Suspend and Revoke Licenses. — This Article vests exclusively in the State Department (now Division) of Motor Vehicles the issuance, suspension and revocation of licenses to operate motor vehicles. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961); Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

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Authority to Require Documented Proof for Name Changes. — The Division of Motor Vehicles does not have authority to establish a policy to require documented proof from the Register of Deeds or official court documents for name changes on driver's licenses and identification cards as the only method of establishing a name change. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, 58 N.C.A.G. 4 (1988).

§ 20-6: Repealed by Session Laws 1973, c. 1330, s. 39.

§ 20-7. Issuance and renewal of drivers licenses.

(a) License Required. — To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. — A Class A license authorizes the holder to drive any of the following:
  a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
  b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. — A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. — A Class C license authorizes the holder to drive any of the following:
  a. A Class C motor vehicle that is not a commercial motor vehicle.
  b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.
  c. A combination of noncommercial motor vehicles that have a GVWR of more than 10,000 pounds but less than 26,001 pounds. This sub-subdivision does not apply to a Class C license holder less than 18 years of age.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident.

(a1) **(Effective until January 1, 2011)** Motorcycles and Mopeds. — To drive a motorcycle, a person shall have:

(1) A full provisional license with a motorcycle learner's permit;
(2) A regular drivers license with a motorcycle learner's permit; or
(3) Either:
  a. A full provisional license; or
  b. A regular drivers license, with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by:

(1) Passing a road test;
(2) Passing a written or oral test concerning motorcycles; and

G.S. 20-7(a1) and (a2) are set out twice. See note.

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(3) Paying the fee for a motorcycle endorsement.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(a1) **(Effective January 1, 2011)** Motorcycles and Mopeds. — To drive a motorcycle, a person shall have one of the following:

(1) A full provisional license with a motorcycle learner's permit.
(2) A regular drivers license with a motorcycle learner's permit.
(3) A full provisional license with a motorcycle endorsement.
(4) A regular drivers license, with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit. To obtain a motorcycle endorsement, a person shall pay the fee set in subsection (i) of this section. In addition, to obtain an endorsement, a person age 18 or older shall demonstrate competence to drive a motorcycle by passing a written or oral test concerning motorcycles and passing a road test, and a person less than 18 years of age shall demonstrate competence to drive a motorcycle by passing a written or oral test concerning motorcycles and providing proof of successful completion of one of the following:

(1) The Motorcycle Safety Foundation Basic Rider Course or Experienced Rider Course.
(2) The North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course.
(3) Any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under G.S. 115D-72.

A person less than 18 years of age with a motorcycle endorsement may not drive a motorcycle with a passenger.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(a2) **(Effective until January 1, 2011)** Motorcycle Learner's Permit. — The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.
(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit.

(a2) **(Effective January 1, 2011)** Motorcycle Learner's Permit. — The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.
(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. An applicant who is less than 18 years old shall successfully complete the Motorcycle Safety Foundation Basic Rider Course or the North Carolina Motorcycle Safety Education Program Basic Rider Course. A motorcycle learner's permit expires twelve months after it is issued and may be renewed for one additional six-month period. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit.

(b) Repealed by Session Laws 1993, c. 368, s. 1, c. 533, s. 12.

(b1) Application. — To obtain an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and, except for an identification card, demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's valid social security number.
(6) The applicant's signature.

The Division shall not issue an identification card, learners permit, or drivers license to an applicant who fails to provide the applicant's valid social security number.

(b2) Disclosure of Social Security Number. — The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the drivers license laws.
(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.
(3) To the Department of Revenue for the purpose of verifying taxpayer identity.
(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.
(5) To each county jury commission for the purpose of verifying the identity of deceased persons whose names should be removed from jury lists.

(b3) The Division shall adopt rules implementing the provisions of subsection (b1) of this section with respect to proof of residency in this State. Those rules shall ensure that applicants submit verified or verifiable residency and address information that can be reasonably considered to be valid and that is provided on any of the following:

(1) A document issued by an agency of the United States or by the government of another nation.
(2) A document issued by another state.
(3) A document issued by the State of North Carolina, or a political subdivision of this State. This includes an agency or instrumentality of this State.

(4) A preprinted bank or other corporate statement.
(5) A preprinted business letterhead.
(6) Any other document deemed reliable by the Division.

(b4) Examples of documents that are reasonably reliable indicators of residency include, but are not limited to, any of the following:

(1) A pay stub with the payee's address.
(2) A utility bill showing the address of the applicant-payor.
(3) A contract for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.
(4) A receipt for personal property taxes paid.
(5) A receipt for real property taxes paid to a North Carolina locality.
(6) A current automobile insurance policy issued to the applicant and showing the applicant's address.
(7) A monthly or quarterly financial statement from a North Carolina regulated financial institution.
(8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.
(9) A document similar to that described in subsection (8) of this section, issued by the consulate or embassy of another country. This subdivision only applies if the Division has consulted with the United State Department of State and is satisfied with the reliability of such document.

(b5) The Division rules adopted pursuant to subsection (b3) of this section shall also provide that if an applicant cannot produce any documentation specified in subsection (b3) or (b4) of this section, the applicant, or in the case of a minor applicant a parent or legal guardian of the applicant, may complete an affidavit, on a form provided by the Division and sworn to before an official of the Division, indicating the applicant's current residence address. The affidavit shall contain the provisions of G.S. 20-15(a) and G.S. 20-17(a)(5) and shall indicate the civil and criminal penalties for completing a false affidavit.

(c) Tests. — To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral tests, and, in the case of literate applicants, written tests, as the Division may require. The tests must ensure that an applicant recognizes the handicapped international symbol of access, as defined in G.S. 20-37.5. The Division may not require a person who applies to renew a license that has not expired to take a written test or a road test unless one or more of the following applies:

(1) The person has been convicted of a traffic violation since the person's license was last issued.
(2) The applicant suffers from a mental or physical condition that impairs the person's ability to drive a motor vehicle.

The Division may not require a person who is at least 60 years old to parallel park a motor vehicle as part of a road test.

(c1) Insurance. — The Division may not issue a drivers license to a person until the person has furnished proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or

facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

The requirement of furnishing proof of financial responsibility does not apply to a person who applies for a renewal of his or her drivers license.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) Repealed by Session Laws 1993, c. 368, s. 1.

(e) Restrictions. — The Division may impose any restriction it finds advisable on a drivers license. It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) Duration and Renewal of Licenses. — Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

(1) Duration of license for persons under age 18. — A full provisional license issued to a person under the age of 18 expires on the person's twenty-first birthday.

(2) Duration of original license for persons at least 18 years of age or older. — A drivers license issued to a person at least 18 years old but less than 54 years old expires on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person at least 54 years old expires on the birthday of the licensee in the fifth year after issuance. A commercial drivers license that has a vehicles carrying passengers (P) and school bus (S) endorsement issued pursuant to G.S. 20-37.16 shall expire on the birth date of the licensee three years after the date of issuance, if the licensee is certified to drive a school bus in North Carolina.

(2a) Duration of renewed licenses. — A renewed drivers license that was issued by the Division to a person at least 18 years old but less than

54 years old expires eight years after the expiration date of the license that is renewed. A renewed drivers license that was issued by the Division to a person at least 54 years old expires five years after the expiration date of the license that is renewed.

(3) Duration of license for certain other drivers. — The durations listed in subdivisions (1), (2) and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States.

(3a) When to renew. — A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside this State shall be considered to have a valid license until 60 days after the date of release from active duty upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law. Notwithstanding the provisions of this sub-subdivision, no license shall be considered valid more than 18 months after the date of expiration.

(4) Renewal by mail. — The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(5) License to be sent by mail. — The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant, unless the applicant is

ineligible for mail delivery by the United States Postal Service at the applicant's residence. If the United States Postal Service documents that it does not deliver to the residential address provided by the applicant, and the Division has verified the applicant's residential address by other means, the Division may mail the drivers license to the post office box provided by the applicant. Applicants whose only mailing address prior to July 1, 2008, was a post office box in this State may continue to receive their license at that post office box, provided the applicant's residential address has been verified by the Division.

(g) Repealed by Session Laws 1979, c. 667, s. 6.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

(i) Fees. — The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee for Each Year
Class A	$4.00
Class B	$4.00
Class C	$4.00

The fee for a motorcycle endorsement is one dollar and seventy-five cents ($1.75) for each year of the period for which the endorsement is issued. The appropriate fee shall be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. — Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(a)(2) shall pay a restoration fee of fifty dollars ($50.00). A person whose drivers license has been revoked under G.S. 20-17(a)(2) shall pay a restoration fee of seventy-five dollars ($75.00). The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five-dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the seventy-five-dollar ($75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate from the funds deposited in the General Fund under this subsection the sum of five hundred thirty-seven thousand four hundred fifty-five dollars ($537,455) to the Board of Governors of The University of North Carolina to be used for the operating expenses of the Bowles Center for Alcohol Studies at the University of North Carolina at Chapel Hill.

(j) Highway Fund. — The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(k) Repealed by Session Laws 1991, c. 726, s. 5.

(*l*) Learner's Permit. — A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is fifteen dollars ($15.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder.

(*l*-1) Repealed by Session Laws 1991, c. 726, s. 5.

(m) Instruction Permit. — The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to any of the following applicants:

(1) An applicant who is less than 18 years old and is enrolled in a drivers education program that is approved by the State Superintendent of Public Instruction and is offered at a public high school, a nonpublic secondary school, or a licensed drivers training school.

(2) An applicant for certification under G.S. 20-218 as a school bus driver.

A restricted instruction permit authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division. The restrictions the Division may impose on a permit include restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee. A restricted instruction permit is not required to have a distinguishing number or a picture of the person to whom the permit is issued.

(n) Format. — A drivers license issued by the Division must be tamperproof and must contain all of the following information:

(1) An identification of this State as the issuer of the license.
(2) The license holder's full name.
(3) The license holder's residence address.
(4) A color photograph, or a properly applied laser engraved picture on polycarbonate material, of the license holder, taken by the Division.
(5) A physical description of the license holder, including sex, height, eye color, and hair color.
(6) The license holder's date of birth.
(7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
(8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
(9) The license holder's signature.
(10) The date the license was issued and the date the license expires.

In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds or borders for each group. The Division shall determine the different colors to be used. The Commissioner shall ensure that applicants 21 years old or older are issued drivers licenses and special identification cards that are printed in a horizontal format. The Commissioner shall ensure that applicants under the age of 21 are issued drivers licenses and special identification cards that are printed in a vertical format, that distinguishes them from the horizontal format, for ease of identification of individuals under age 21 by members of industries that regulate controlled products that are sale restricted by age and law enforcement officers enforcing these laws.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race.

(o) Repealed by Session Laws 1991, c. 726, s. 5.

(p) The Division must give the clerk of superior court in each county at least 50 copies of the driver license handbook free of charge. The clerk must give a copy to a person who requests it.

(q) Military Designation. — The Division shall develop a military designation for drivers licenses that may, upon request, be granted to North Carolina residents on active duty and to their spouses and dependent children. A drivers license with a military designation on it may be renewed by mail no more than two times during the license holder's lifetime. A license renewed by mail under this subsection is a permanent license and does not expire when the license holder returns to the State. A drivers license with a military designation on it issued to a person on active duty may be renewed up to one year prior to its expiration upon presentation of military or Department of Defense credentials.

(r) Waiver of Vision Test. — The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

(1) A member of the Armed Forces of the United States.

(2) A member of a reserve component of the Armed Forces of the United States.

(s) Notwithstanding the requirements of subsection (b1) of this section that an applicant present a valid social security number, the Division shall issue a drivers license of limited duration, under subsection (f) of this section, to an applicant present in the United States who holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States if the applicant presents that valid documentation and meets all other requirements for a license of limited duration. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5; 1967, c. 509; 1969, c. 183; c. 783, s. 1; c. 865; 1971, c. 158; 1973, cc. 73, 705; c. 1057, ss. 1, 3; 1975, c. 162, s. 1; c. 295; c. 296, ss. 1, 2; c. 684; c. 716, s. 5; c. 841; c. 875, s. 4; c. 879, s. 46; 1977, c. 6; c. 340, s. 3; c. 865, ss. 1, 3; 1979, c. 37, s. 1; c. 113; c. 178, s. 2; c. 667, ss. 3-11, 41; c. 678, ss. 1-3; c. 801, ss. 5, 6; 1981, c. 42; c. 690, ss. 8-10; c. 792, s. 3; 1981 (Reg. Sess., 1982), c. 1257, s. 1; 1983, c. 443, s. 1; 1985, c. 141, s. 4; c. 682, ss. 1, 2; 1987, c. 869, ss. 10, 11; 1989, c. 436, ss. 1, 2; c. 771, s. 5; c. 786, s. 4; 1991, c. 478, s. 1; c. 689, s. 325; c. 726, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 27; c. 1030, s. 10; 1993, c. 368, s. 1; c. 533, ss. 2, 3, 12; 1993 (Reg. Sess., 1994), c. 595, ss. 1, 2; c. 750, s. 1; c. 761, s. 1.1; 1995 (Reg. Sess., 1996), c. 675, s. 1; 1997-16, ss. 5, 8, 9; 1997-122, ss. 2, 3; 1997-377, s. 1; 1997-433, s. 4; 1997-443, ss. 11A.122, 32.20; 1997-456, s. 32, 33; 1998-17, s. 1; 1998-149, s. 2; 2000-120, ss. 14, 15; 2000-140, s. 93.1(a); 2001-424, ss. 12.2(b), 27.10A(a)-(d); 2001-513, s. 32(a); 2003-152, ss. 1, 2; 2003-284, s. 36.1; 2004-189, s. 5(a); 2004-203, s. 2; 2005-276, s. 44.1(a); 2005-349, s. 4; 2006-257, ss. 1, 2; 2006-264, s. 35.2; 2007-56, ss. 1-3; 2007-249, s. 1; 2007-350, s. 1; 2007-512, s. 5; 2008-202, ss. 2, 3; 2008-217, s. 1; 2008-221, s. 1; 2009-274, ss. 2, 3; 2009-451, s. 9.5(a); 2009-492, ss. 1, 2.)

Subsections (a1) and (a2) Set Out Twice. — The first version of subsections (a1) and (a2) set out above are effective until January 1, 2011. The second version of subsections (a1) and (a2) set out above are effective January 1, 2011.

Cross References. — As to jurisdiction of prosecution under this section, see note to G.S. 7A-272. As to criminal record checks of applicants and of current employees who are involved in the manufacture or production of drivers licenses and identification cards, see G.S. 114-19.24.

Support Troops Participating in Operations Enduring Freedom and Noble Eagle. — Session Laws 2001-508, ss. 3 to 5(b), provide: "Section 3. Definitions. — As used in this act:

"(1) (Military personnel) includes both of the following:

"a. A member of the armed forces or the armed forces reserves of the United States on active duty in support of Operation Enduring Freedom or Operation Noble Eagle on or after September 11, 2001.

"b. A member of the North Carolina Army National Guard or the North Carolina Air National Guard called to active duty in support of Operation Enduring Freedom or Operation Noble Eagle on or after September 11, 2001.

"A copy of the soldier's military orders specifying deployment is conclusive evidence of the soldier's deployment.

"(2) (Operation Enduring Freedom) or (Operation Noble Eagle) include any other operations with differing names arising out of the same occurrence.

"Section 4. Waiver of Deadlines, Fees, and Penalties. — Except as prohibited by the Constitution, the Governor may extend deadlines and waive penalties or fees as is necessary to alleviate hardship created for deployed military personnel serving in either Operation Enduring Freedom or Operation Noble Eagle. Such authority includes, but is not limited to, the authority to:

"(1) Extend for up to 90 days from the end of deployment the validity of a permanent or temporary drivers license issued under G.S. 20-7 to deployed military personnel;

"(2) Waive civil penalties and restoration fees under G.S. 20-309 for any deployed military personnel whose motor vehicle liability insurance lapsed during the period of deployment or within 90 days after the soldier returned to North Carolina if the soldier certifies to the Division of Motor Vehicles that the motor vehicle was not driven on the highway by anyone during the period in which the motor vehicle was uninsured and that the owner now has liability insurance on the motor vehicle;

"(3) Allow up to 90 days from the end of deployment for any deployed military personnel to renew a license as defined in G.S. 93B-1. During the period of deployment or active duty and until the expiration of the 90-day period provided for in this subsection, expired licenses that are within the scope of this act [Session Laws 2001-508] shall remain valid, as if they had not expired; and

"(4) Require that any renewal fee applicable to the renewal of a license under subdivision (3) of this section [s. 4 of Session Laws 2001-508] be prorated over the period covered by the license and reduced in proportion to the period of time that the licensee was deployed outside the State.

"Section 5.(a) Property Taxes. — Notwithstanding G.S. 105-360 or G.S. 105-330.4, deployed military personnel are allowed 90 days after the end of the individual's deployment to pay property taxes at par, for any property taxes that became due or delinquent during the term of the deployment. For these individuals, the taxes for the relevant tax year do not become delinquent until after the end of the 90-day period provided in this section [s. 5 of Session Laws 2001-508], and an individual who pays the property taxes before the end of the 90-day period is not liable for interest on the taxes for the relevant tax year. If the individual does not pay the taxes before the end of the 90-day period, interest shall accrue on the taxes according to the schedule provided in G.S. 105-360 or G.S. 105-330.4, as applicable, as though the taxes were unpaid as of the date the taxes would have become delinquent if not for this section [s. 5 of Session Laws 2001-508].

"Section 5.(b). Notwithstanding G.S. 105-307, deployed military personnel required to list property for taxation while deployed are allowed 90 days after the end of the deployment to list the property. For these individuals, the listing period for the relevant tax year is extended until the end of the 90-day period provided in this act [Session Laws 2001-508], and an individual who lists the property before the end of the 90-day period is not subject to civil or criminal penalties for failure to list the property required to be listed during deployment."

Waiver of Deadlines, Fees, and Penalities for Deployed Military Personnel. — Session Laws 2003-300, ss. 1 to 3, as amended by Session Laws 2004-203, s. 80, provide:

"SECTION 1. Deployed Military Personnel Defined. — As used in this act, the term 'deployed military personnel' includes both of the following:

"(1) A member of the armed forces or the armed forces reserves of the United States on active duty in support of Operation Iraqi Freedom on or after January 1, 2003.

"(2) A member of the North Carolina Army National Guard or the North Carolina Air National Guard called to active duty in support of Operation Iraqi Freedom on or after January 1, 2003.

"SECTION 2. Proof. — Verification by the military member's command specifying deployment is conclusive evidence of the military member's deployment.

"SECTION 3. Waiver of Deadlines, Fees, and Penalties. — Except as prohibited by the Constitution, the Governor may extend deadlines and waive penalties or fees as is necessary to alleviate hardship created for deployed military personnel serving in Operation Iraqi Freedom. This authority includes the authority to do all of the following:

"(1) Extend for up to 90 days from the end of deployment the validity of a permanent or temporary drivers license issued under G.S. 20-7 to deployed military personnel.

"(2) Waive civil penalties and restoration fees under G.S. 20-309 for any deployed military personnel whose motor vehicle liability insurance lapsed during the period of deployment or within 90 days after the military member returned to North Carolina if the military member certifies to the Division of Motor Vehicles that the motor vehicle was not driven on the highway by anyone during the period in which the motor vehicle was uninsured and that the owner now has liability insurance on the motor vehicle.

"(3) Allow up to 90 days from the end of deployment for any deployed military personnel to renew an occupational license. During the period of deployment or active duty and until the expiration of the 90-day period provided for in this subdivision, expired occupational licenses that are within the scope of this act remain valid, as if they had not expired. For the purposes of this section, the term 'occupational license' means any license (other than a privilege license), certificate, or other evidence of qualification that an individual is required to obtain before the individual may engage in or represent himself or herself to be a member of a particular profession or occupation.

"(4) Require that any renewal fee applicable to the renewal of a license under subdivision (3) of this section be prorated over the period covered by the license and reduced in proportion to the period of time that the licensee was deployed outside the State.'"

Editor's Note. — Session Laws 1975, c. 162, s. 2 provided: "The Department of Motor Vehicles shall monitor the occurrence of traffic violations within the State and submit yearly reports to the General Assembly. The effect of this act on the violation statistics of North Carolina drivers as of January 1, 1976, and each year thereafter shall be included in the yearly report to allow the objective evaluation of this act and its effect on North Carolina drivers."

Session Laws 1985, c. 141, s. 6 provided that the amendment thereby would become effective September 1, 1986. Section 6 further provided that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4, and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4, and 5 shall revert to the form they would have without the amendments made by these sections.

Session Laws 1987 (Reg. Sess., 1988), c. 1112 would have amended subsections (a) and (i) of this section effective June 1, 1989, through June 30, 1989, so as to make changes regarding the requirements for and entitlements of certain licenses, with certain exceptions for persons holding a Class C license issued before June 1, 1989. Session Laws 1989, c. 771, s. 18, effective June 1, 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, the provisions of c. 1112 never went into effect.

Session Laws 1993, c. 368, which amended this section, in s. 5 provides: "A drivers license or a special identification card issued by the Division of Motor Vehicles before January 1, 1995, and renewed by the Division after that date is considered the first drivers license or special identification card issued by the Division for purposes of determining when the license or card expires."

Session Laws 1997-16, s. 10 provides that the act does not appropriate funds to the Division to implement the act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 2001-424, ss. 27.10A(b) to (d) enacted new subsections which the act numbered (b2), (b3), and (b4). As the section already contained a subsection (b2), at the direction of the Reviser of Statutes these subsections have been renumbered (b3), (b4), and (b5).

Session Laws 2003-284, s. 48.1, provides: "Parts 32 through 47 of this act do not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by those parts before the effective date of its amendment or repeal; nor do they affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Captial Improvements Appropriations Act of 2003'. "

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, contains a severability clause.

Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 27.1, provides: "The Department of Transportation, Division of Motor Vehicles, is prohibited from opening drivers license issuance and vehicle registration issuance and renewal One-Stop Shops until the General Assembly has considered and appropriated funds for the purpose of One-Stop Shops.

"The Department of Transportation shall develop a business plan that thoroughly outlines the operational plans of a combined function center, a detailed budget for each proposed location, and any identified savings gleaned from the combined services. In addition, the Division of Motor Vehicles shall conduct an analysis on the anticipated number of transactions and the impact to independent tag agents in those areas. The report is due to the Joint Legislative Transportation Oversight Committee, the Joint Appropriations Subcommittee for Transportation, and the Fiscal Research Division by March 15, 2008."

Session Laws 2007-323, s. 27.16, provides: "The Division of Motor Vehicles shall report the closing of any drivers license office to the Joint Legislative Transportation Oversight Committee at least 60 days before the closure. The report shall contain the location of the office by city and county, the number of customers served in that office in the preceding 12 months, the cost of operating the office to be closed, the reasons for the closure, where the customers will be directed for service after the closure, and the Division's intent to provide displaced customers with future service. Of the funds appropriated to the Department of Transportation, Division of Motor Vehicles, the Division shall reopen and operate a full-time drivers license office in Tabor City, Columbus County."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 25.13 reads: "Provided that the Commissioner of the Department of Motor Vehicles is not required to reissue a drivers license in the horizontal format to drivers when the drivers turn 21, up to fifty thousand dollars ($50,000) of any funding received by the Division of Motor Vehicles to help fund the drivers license format change from horizontal to vertical, for drivers less than 21 years of age, shall be appropriated to the Department of Transportation, System Preservation Account, to replace funds previously expended by the Division for this initiative."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008 2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008 2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-217, s. 2 provides: "The Office of State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Session Laws 2009-492, s. 3, provides: "The Commissioner of Motor Vehicles shall determine the availability of spaces for students in the Motorcycle Safety Foundation courses, the North Carolina Motorcycle Safety Education Program courses, and any other motorcycle education courses the Commissioner has approved in the State, in order to determine if there is adequate space in the available courses to meet the expected demand, and if the projected average wait time for an applicant to obtain a space in a course required by this act will exceed four weeks. The Commissioner shall report the results of the study to the Joint Legislative Commission on Governmental Operations on or before March 1, 2010."

Session Laws 2009-492, s. 4, provides: "The University of North Carolina Highway Safety Research Center shall study whether individuals 18 to 21 years of age should be required to successfully complete a motorcycle safety course prior to being issued a motorcycle learner's permit or motorcycle endorsement. The Committee shall report the results of the study to the Joint Legislative Transportation Oversight Committee on or before March 1, 2010."

Session Laws 2009-492, s. 5, provides in part: "The requirement for completing a riding course specified in this act does not apply to a motorcycle learner's permit issued prior to the effective date of this act, or to the renewal of any motorcycle endorsement first issued prior to the effective date of this act. A motorcycle learner's permit issued prior to the effective date of this act expires on the date indicated on the permit and may be renewed for one additional six-month period."

Effect of Amendments. — Session Laws 2007-56, s. 1, effective retroactively to January 1, 2007, and applicable to drivers licenses issued or renewed on or after that date, rewrote subdivisions (f)(1), (2) and (3), and added subdivisions (f)(2a) and (f)(3a).

Session Laws 2007-56, ss. 2 and 3, effective May 23, 2007, and applicable to drivers licenses issued or renewed on or after that date, rewrote subdivision (f)(3), and rewrote subsection (s).

Session Laws 2007-350, s. 1, effective September 13, 2007, and applicable to new and renewal licenses issued on or after that date, added the last sentence in subdivision (f)(2).

Session Laws 2008-202, ss. 2 and 3, effective August 8, 2008, in subdivision (f)(5), added the language beginning "unless the applicant is ineligible for mail delivery" to the end of the subdivision; in subdivision (n)(4), inserted "or a properly applied laser engraved picture on polycarbonate material"; in the second full paragraph in subsection (n), deleted the former first sentence, which read: "The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the photograph would violate the license holder's religious convictions"; and made minor grammatical changes.

Session Laws 2008-217, s. 1, effective October 1, 2008, and applicable to drivers licenses and special identification cards issued or renewed on or after that date, added the last two sentences in the second full paragraph of subsection (n).

Session Laws 2008-221, s. 1, effective September 1, 2008, added subdivisions (a)(3)c.

Session Laws 2009-492, ss. 1, 2, effective January 1, 2011, rewrote subsections (a1) and (a2). For applicability, see Editor's notes.

Session Laws 2009-451, s. 9.5(a), effective July 1, 2009, in subsection (i1), in the first paragraph, substituted "G.S. 20-17(a)(2)" for "G.S. 20-17(2)" in the first sentence, substituted "G.S. 20-17(a)(2) shall pay a restoration fee of seventy-five dollars ($75.00)" for "G.S. 20-17(2) shall pay a restoration fee of seventy-five dollars ($75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of fifty dollars ($50.00) thereafter" in the second sentence, and deleted "shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and" preceding "shall annually report" in the last sentence; in the second paragraph, inserted "from" near the beginning, "the sum of five hundred thirty-seven thousand four hundred fifty-five dollars ($537,455)" near the middle, and substituted "operating expenses of the Bowles Center for Alcohol Studies at the University of North Carolina at Chapel Hill" for "the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000)" at the end.

Session Laws 2009-274, ss. 2 and 3, effective July 10, 2009, and applicable to all licenses expiring on or after that date, added subdivision (f)(3b); in sudivision (f)(4)a., inserted "a member of the Armed Forces or a reserve component of the Armed Forces of the United States" near the beginning, and deleted "in the armed forces of the United States" following "active duty" near the middle; and, in subdivisions (r)(1) and (r)(2), substituted "Armed Forces" for "armed forces", and in subdivision (r)(2), deleted "the national guard or of" following "member of."

Legal Periodicals. — For comment on the 1953 amendments, see 31 N.C.L. Rev. 412 (1953).

For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

For 1997 Legislative Survey, see 20 Campbell L. Rev. 491.

CASE NOTES

This section and G.S. 20-35, being in pari materia, must be construed together, and, if possible, they must be reconciled and harmonized. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Penalty. — Any person convicted of operating a motor vehicle over any highway in this State without having first been licensed as such operator, in violation of subsection (a) of this section, is guilty of a misdemeanor; and, under former G.S. 20-35(b), was subject to punishment by imprisonment for a term of not more than six months. The superior court, even if it had jurisdiction in other respects, had no authority to pronounce judgment imposing a prison sentence of two years for this criminal offense. State v. Wall, 271 N.C. 675, 157 S.E.2d 363 (1967).

A violation of this section is not statutorily a lesser included offense of G.S. 20-28. State v. Cannon, 38 N.C. App. 322, 248 S.E.2d 65 (1978).

The defendant could not be prosecuted for driving while his license was permanently revoked in violation of G.S. 20-28 because of the prohibition against double jeopardy, where the defendant had previously pled guilty to driving without a license in violation of this section based upon the same event. While a violation of this section is not statutorily a lesser included offense of a violation of G.S. 20-28, under the "additional facts test" of double jeopardy when applied to the defendant's offenses, the two offenses were the same both in fact and in law since the evidence that the defendant was driving an automobile while his license had been permanently revoked would sustain a conviction for driving without a license. State v. Cannon, 38 N.C. App. 322, 248 S.E.2d 65 (1978).

Subsection (i1) of this section does not expressly extend the period of a suspension, cancellation or revocation; it merely provides for the payment of a fee for an administrative act by the Department (now Division). Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

The contention that a revocation remains in effect not only throughout the period stated in the order of revocation but also until the person whose license was revoked applies for a restoration of his license and pays the restoration fee required by subsection (i1) of this section is contrary to the definition of "revocation" in former G.S. 20-6 [now in G.S. 20-4.01(36)]. Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

Driving without a License Is Negligent Per Se. — Under this section it is negligence per se for one to drive a motor vehicle without a license, but such negligence must be the proximate cause of injury in order to be actionable. Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946).

Trial court did not err in admitting testimony that decedent did not have motorcycle endorsement at time of accident. Violation of this section is negligence per se. Ward v. McDonald, 100 N.C. App. 359, 396 S.E.2d 337 (1990).

Probable Cause for Arrest. — Where trooper could have placed defendant under arrest for not carrying his driver's license, but merely choose to ask defendant to step back to the patrol car so that he could check defendant's license information and so that he could further investigate defendant's intoxication based upon defendant's unsteady movements and smell of alcohol and after defendant failed field sobriety tests he was placed under arrest and advised of his rights, the seizure was constitutionally permissible and there was sufficient probable cause for arrest. State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

Applied in State v. Green, 266 N.C. 785, 147 S.E.2d 377 (1966); State v. White, 18 N.C. App. 31, 195 S.E.2d 576 (1973); In re Frye, 32 N.C. App. 384, 232 S.E.2d 301 (1977); Hinson v. Jarvis, 190 N.C. App. 607, 660 S.E.2d 604, 2008 N.C. App. LEXIS 990 (2008).

Cited in State v. Payne, 213 N.C. 719, 197 S.E. 573 (1938); Brown v. Fidelity & Cas. Co., 241 N.C. 666, 86 S.E.2d 433 (1955); Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960); Parks v. Washington, 255 N.C. 478, 122 S.E.2d 70 (1961); State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968); State v. Newborn, 11 N.C. App. 292, 181 S.E.2d 214 (1971); State v. Baxley, 15 N.C. App. 544, 190 S.E.2d 401 (1972); Williams v. Wachovia Bank & Trust Co., 292 N.C. 416, 233 S.E.2d 589 (1977); United States v. Dixon, 729 F. Supp. 1113 (W.D.N.C. 1990); State v. Green, 103 N.C. App. 38, 404 S.E.2d 363 (1991); State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991); Craig v. Faulkner, 151 N.C. App. 581, 565 S.E.2d 733, 2002 N.C. App. LEXIS 743 (2002); State v. McKinney, 153 N.C. App. 369, 570 S.E.2d 238, 2002 N.C. App. LEXIS 1184 (2002); State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008); State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

OPINIONS OF ATTORNEY GENERAL

Driving without License as Lesser Included Offense of Driving While License Suspended or Revoked. — See opinion of Attorney General to Mr. Charles B. Winberry, Chief District Prosecutor, Seventh Judicial District, 40 N.C.A.G. 427 (1970).

§ 20-7.01: Repealed by Session Laws 1979, c. 667, s. 43.

§ 20-7.1. Notice of change of address or name.

(a) Address. — A person whose address changes from the address stated on a drivers license must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a duplicate license within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. — A person whose name changes from the name stated on a drivers license must notify the Division of the change within 60 days after the change occurs and obtain a duplicate drivers license stating the new name.

(c) Fee. — G.S. 20-14 sets the fee for a duplicate license. (1975, c. 223, s. 1; 1979, c. 970; 1983, c. 521, s. 1; 1997-122, s. 4.)

CASE NOTES

Cited in State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

OPINIONS OF ATTORNEY GENERAL

License Must Show Current Address. — See opinion of Attorney General to Mr. Edward Powell, Commissioner of Motor Vehicles, 45 N.C.A.G. 194 (1976).

§ 20-7.2: Repealed by Session Laws 1987, c. 581, s. 2.

§ 20-7.3. Availability of organ, eye, and tissue donor cards at motor vehicle offices.

The Division shall make organ, eye, and tissue donor cards available to interested individuals in each office authorized to issue drivers licenses or special identification cards. The Division shall obtain donor cards from qualified organ, eye, or tissue procurement organizations or tissue banks, as defined in G.S. 130A-412.4(31). The Division shall offer organ donation information and a donor card to each applicant for a drivers license. The organ donation information shall include the following:

(1) A statement informing the individual that federally designated organ procurement organizations and eye banks have read-only access to the Department-operated Organ Donor Registry Internet site (hereafter "Donor Registry") listing those individuals who have stated to the Division of Motor Vehicles the individual's intent to be an organ donor and have an organ donation symbol on the individual's drivers license or special identification card.

(2) The type of information that will be made available on the Donor Registry. (2001-481, s. 3; 2004-189, s. 3; 2007-538, s. 7.)

Editor's Note. — Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

§ 20-7.4. License to Give Trust Fund established.

(a) There is established the License to Give Trust Fund. Revenue in the Fund includes amounts credited by the Division as required by law, and other funds. Any surplus in the Fund shall not revert but shall be used for the purposes stated in this section. The Fund shall be kept on deposit with the State Treasurer, as in the case of other State Funds, and may be invested by the State Treasurer in any lawful securities for investment of State funds. The

License to Give Trust Fund is subject to oversight by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(b) The purposes for which funds may be expended by the License to Give Trust Fund Commission from the License to Give Trust Fund are as follows:

(1) As grants-in-aid for initiatives that educate about and promote organ and tissue donation and health care decision making at life's end.

(2) Expenses of the License to Give Trust Fund Commission as authorized in G.S. 20-7.5. (2004-189, s. 4(a).)

Editor's Note. — Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

§ 20-7.5. License to Give Trust Fund Commission established.

(a) There is established the License to Give Trust Fund Commission. The Commission shall be located in the Department of Administration for budgetary and administrative purposes only. The Commission may allocate funds from the License to Give Trust Fund for the purposes authorized in G.S. 20-7.4. The Commission shall have 15 members, appointed as follows:

(1) Four members by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate:
  a. One representative of Carolina Donor Services.
  b. One representative of LifeShare of The Carolinas.
  c. Two members who have demonstrated an interest in organ and tissue donation and education.

(2) Four members by the General Assembly, upon the recommendation of the Speaker of the House of Representatives:
  a. One representative of The North Carolina Eye Bank, Inc.
  b. One representative of The Carolinas Center for Hospice and End-of-Life Care.
  c. Two members who have demonstrated an interest in promoting advance care planning education.

(3) Seven members by the Governor:
  a. Three members representing organ, tissue, and eye recipients, families of recipients, or families of donors. Of these three, one each from the mountain, heartland, and coastal regions of the State.
  b. One member who is a transplant physician licensed to practice medicine in this State.
  c. One member who has demonstrated an interest in organ and tissue donation and education.
  d. One member who has demonstrated an interest in promoting advance care planning education.
  e. A representative of the North Carolina Department of Transportation.

(b) The Commission shall elect from its membership a chair and a vice-chair for two-year terms. The Secretary of Administration shall provide meeting facilities for the Commission as required by the Chair.

(c) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as applicable. Per diem, subsistence, and travel expenses of the members shall be paid from the License to Give Trust Fund.

(d) The members of the Commission shall comply with G.S. 14-234 prohibiting conflicts of interest. In addition to the restrictions imposed under G.S. 14-234, a member shall not vote on, participate in the deliberations of, or otherwise attempt through his or her official capacity to influence the vote on allocations of moneys from the License to Give Trust Fund to a nonprofit entity of which the member is an officer, director, or employee, or to a governmental entity of which the member is an employee or a member of the governing board. A violation of this subsection is a Class 1 misdemeanor. (2004-189, s. 4(b).)

Editor's Note. — Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

§ 20-7.6. Powers and duties of the License to Give Trust Fund Commission.

The License to Give Trust Fund Commission has the following powers and duties:

(1) Establish general policies and guidelines for awarding grants-in-aid to nonprofit entities to conduct education and awareness activities on organ and tissue donation and advance care planning.

(2) Accept gifts or grants from other sources to further the purposes of the License to Give Trust Fund. Such gifts or grants shall be transmitted to the State Treasurer for credit to the Fund.

(3) Hire staff or contract for other expertise for the administration of the Fund. Expenses related to staffing shall be paid from the License to Give Trust Fund. (2004-189, s. 4(b).)

Editor's Note. — Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

§ 20-8. Persons exempt from license.

The following are exempt from license hereunder:

(1) Any person while operating a motor vehicle the property of and in the service of the Armed Forces of the United States. This shall not be construed to exempt any operators of the United States Civilian Conservation Corps motor vehicles;

(2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;

(3) A nonresident who is at least 16 years of age who has in his immediate possession a valid driver's license issued to him in his home state or country if the nonresident is operating a motor vehicle in this State in accordance with the license restrictions and vehicle classifications

that would be applicable to him under the laws and regulations of his home state or country if he were driving in his home state or country. This exemption specifically applies to nonresident military spouses, regardless of their employment status, who are temporarily residing in North Carolina due to the active duty military orders of a spouse.

(4) to (6) Repealed by Session Laws 1979, c. 667, s. 13.

(7) Any person who is at least 16 years of age and while operating a moped. (1935, c. 52, s. 3; 1963, c. 1175; 1973, c. 1017; 1975, c. 859, s. 2; 1979, c. 574, s. 7; c. 667, s. 13; 1983, c. 436; 2009-274, s. 4.)

Effect of Amendments. — Session Laws 2009-274, s. 4, effective July 10, 2009, and applicable to all licenses expiring on or after that date, substituted "Armed Forces" for "armed forces" in subdivision (1).

Legal Periodicals. — For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

CASE NOTES

Cited in Brown v. Fidelity & Cas. Co., 241 N.C. 666, 86 S.E.2d 433 (1955).

OPINIONS OF ATTORNEY GENERAL

Exemption for One Driving Farm Tractor Applies Only to One Actually Engaged in Farming Operations. — See opinion of Attorney General to LTC Charles B. Pierce, N.C. State Highway Patrol, 41 N.C.A.G. 832 (1972).

§ 20-9. What persons shall not be licensed.

(a) To obtain a regular drivers license, a person must have reached the minimum age set in the following table for the class of license sought:

Class of Regular License	Minimum Age
Class A	18
Class B	18
Class C	16

G.S. 20-37.13 sets the age qualifications for a commercial drivers license.

(b) The Division shall not issue a driver's license to any person whose license has been suspended or revoked during the period for which the license was suspended or revoked.

(b1) The Division shall not issue a drivers license to any person whose permit or license has been suspended or revoked under G.S. 20-13.2(c1) during the suspension or revocation period, unless the Division has restored the person's permit or license under G.S. 20-13.2(c1).

(c) The Division shall not issue a driver's license to any person who is an habitual drunkard or is an habitual user of narcotic drugs or barbiturates, whether or not such use be in accordance with the prescription of a physician.

(d) No driver's license shall be issued to any applicant who has been previously adjudged insane or an idiot, imbecile, or feebleminded, and who has not at the time of such application been restored to competency by judicial decree or released from a hospital for the insane or feebleminded upon a certificate of the superintendent that such person is competent, nor then unless the Division is satisfied that such person is competent to operate a motor vehicle with safety to persons and property.

(e) The Division shall not issue a driver's license to any person when in the opinion of the Division such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs.

(f) The Division shall not issue a driver's license to any person whose license or driving privilege is in a state of cancellation, suspension or revocation in any jurisdiction, if the acts or things upon which the cancellation, suspension or revocation in such other jurisdiction was based would constitute lawful grounds for cancellation, suspension or revocation in this State had those acts or things been done or committed in this State; provided, however, any such cancellation shall not prohibit issuance for a period in excess of 18 months.

(g) The Division may issue a driver's license to any applicant covered by subsection (e) of this section under the following conditions:

(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety.

(2) The Division shall not issue a license pursuant to this section unless the applicant has submitted to a physical examination by a physician or surgeon duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physician or surgeon has completed and signed the certificate required by subdivision (1). Such certificate shall be devised by the Commissioner with the advice of qualified experts in the field of diagnosing and treating physical and mental disorders as he may select to assist him and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not it would be a hazard to public safety to permit the applicant to operate a motor vehicle, including, if such is the fact, the examining physician's statement that the applicant is under medication and treatment and that such person's physical or mental disability is controlled. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether a license should be issued to the applicant.

(3) The Commissioner is not bound by the recommendation of the examining physician but shall give fair consideration to such recommendation in exercising his discretion in acting upon the application, the criterion being whether or not, upon all the evidence, it appears that it is safe to permit the applicant to operate a motor vehicle. The burden of proof of such fact is upon the applicant. In deciding whether to issue or deny a license, the Commissioner may be guided by opinion of experts in the field of diagnosing and treating the specific physical or mental disorder suffered by an applicant and such experts may be compensated for their services on an equitable basis. The Commissioner may also take into consideration any other factors which bear on the issue of public safety.

(4) Whenever a license is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the applicant filed with the Division within 10 days after receipt of such denial. The reviewing board shall consist of the Commissioner or his authorized representative and four persons designated by the chairman of the Commission for Public Health. The persons designated by the chair-

man of the Commission for Public Health shall be either members of the Commission for Public Health or physicians duly licensed to practice medicine in this State. The members so designated by the chairman of the Commission for Public Health shall receive the same per diem and expenses as provided by law for members of the Commission for Public Health, which per diem and expenses shall be charged to the same appropriation as per diems and expenses for members of the Commission for Public Health. The Commissioner or his authorized representative, plus any two of the members designated by the chairman of the Commission for Public Health, constitute a quorum. The procedure for hearings authorized by this section shall be as follows:

a. Applicants shall be afforded an opportunity for hearing, after reasonable notice of not less than 10 days, before the review board established by subdivision (4). The notice shall be in writing and shall be delivered to the applicant in person or sent by certified mail, with return receipt requested. The notice shall state the time, place, and subject of the hearing.

b. The review board may compel the attendance of witnesses and the production of such books, records and papers as it desires at a hearing authorized by the section. Upon request of an applicant, a subpoena to compel the attendance of any witness or a subpoena duces tecum to compel the production of any books, records, or papers shall be issued by the board. Subpoenas shall be directed to the sheriff of the county where the witness resides or is found and shall be served and returned in the same manner as a subpoena in a criminal case. Fees of the sheriff and witnesses shall be the same as that allowed in the district court in cases before that court and shall be paid in the same manner as other expenses of the Division of Motor Vehicles are paid. In any case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court or superior court where such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, shall compel obedience or punish as for contempt.

c. A hearing may be continued upon motion of the applicant for good cause shown with approval of the board or upon order of the board.

d. The board shall pass upon the admissibility of evidence at a hearing but the applicant affected may at the time object to the board's ruling, and, if evidence offered by an applicant is rejected the party may proffer the evidence, and such proffer shall be made a part of the record. The board shall not be bound by common law or statutory rules of evidence which prevail in courts of law or equity and may admit and give probative value to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They may exclude incompetent, immaterial, irrelevant and unduly repetitious evidence. Uncontested facts may be stipulated by agreement between an applicant and the board and evidence relating thereto may be excluded. All evidence, including records and documents in the possession of the Division of Motor Vehicles or the board, of which the board desires to avail itself shall be made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The board shall prepare an official record, which shall include testimony and exhibits. A record of the testimony and other evidence submitted shall be taken, but it shall not be necessary to transcribe shorthand notes or electronic recordings unless requested for purposes of court review.

e. Every decision and order adverse to an applicant shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the board's conclusions on each contested issue of fact. Counsel for applicant, or applicant, if he has no counsel, shall be notified of the board's decision in person or by registered mail with return receipt requested. A copy of the board's decision with accompanying findings and conclusions shall be delivered or mailed upon request to applicant's attorney of record or to applicant, if he has no attorney.

f. Actions of the reviewing board are subject to judicial review as provided under Chapter 150B of the General Statutes.

g. Repealed by Session Laws 1977, c. 840.

h. All records and evidence collected and compiled by the Division and the reviewing board shall not be considered public records within the meaning of Chapter [section] 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. All information furnished by or on behalf of an applicant under this section shall be without prejudice and shall be for the use of the Division, the reviewing board or the court in administering this section and shall not be used in any manner as evidence, or for any other purposes in any trial, civil or criminal.

(h) The Division shall not issue a drivers license to an applicant who currently holds a license to drive issued by another state unless the applicant surrenders the license.

(i) The Division shall not issue a drivers license to an applicant who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after

access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a license or whose license has been revoked by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction, and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-30. (1935, c. 52, s. 4; 1951, c. 542, s. 3; 1953, c. 773; 1955, c. 118, s. 7; 1967, cc. 961, 966; 1971, c. 152; c. 528, s. 11; 1973, cc. 135, 441; c. 476, s. 128; c. 1331, s. 3; 1975, c. 716, s. 5; 1979, c. 667, ss. 14, 41; 1983, c. 545; 1987, c. 827, s. 1; 1989, c. 771, s. 7; 1991, c. 726, s. 6; 1993, c. 368, s. 2; c. 533, s. 4; 1999-243, s. 4; 1999-452, s. 8; 2003-14, s. 1; 2006-247, s. 19(c); 2007-182, s. 2.)

Editor's Note. — Session Laws 1993, c. 368, which amended this section, in s. 5 provides: "A drivers license or a special identification card issued by the Division of Motor Vehicles before January 1, 1995, and renewed by the Division after that date is considered the first drivers license or special identification card issued by the Division for purposes of determining when the license or card expires."

Legal Periodicals. — For note on reporting patients for review of driver's license, see 48 N.C.L. Rev. 1003 (1970).

For note discussing the extension of the family purpose doctrine to motorcycles and private property, see 14 Wake Forest L. Rev. 699 (1978).

CASE NOTES

Statutes Governing Driving Privileges Civil in Nature. — Administration of statutes governing the issuance, revocation, suspension and cancellation of driving privileges is civil, rather than penal, in nature. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

Alcoholism. — Findings and conclusions by the Driver License Medical Review Board were sufficient to support its order that petitioner not be granted driving privileges where the board found that petitioner had an alcohol problem; the board gave fair consideration to the recommendation of petitioner's physician that he be granted driving privileges, but the recommendation did not have to be expressly rejected by the board. McCormick v. Peters, 48 N.C. App. 365, 269 S.E.2d 168 (1980).

Epilepsy. — Prior to 1967, subsection (d) of this section prohibited the licensing of anyone who had been diagnosed as having grand mal epilepsy. In 1967 this section was amended to delete the words "grand mal epileptic." Ormond v. Garrett, 8 N.C. App. 662, 175 S.E.2d 371 (1970).

The Division of Motor Vehicles was without authority to deny or withhold petitioner's license to operate a motor vehicle upon the highways of the State where the record showed that once or twice a year petitioner, who suffered from epilepsy, had an epileptic seizure and that with one exception when petitioner blacked out while driving and ran off the road, all the seizures had occurred in his sleep, and all the other evidence tended to show that his seizures were controlled and that he had exercised reasonable and ordinary control over his vehicle while operating it upon the highways. Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980).

Where the record on appeal contained no evidence that petitioner suffered from an "uncontrolled seizure disorder," although it did show that petitioner had suffered seizures from time to time, the whole record did not support the finding required by this section that petitioner be suffering from a mental or physical disability that prevents him from exercising reasonable and ordinary control in the operation of a motor vehicle on the highways. Chesnutt v. Peters, 44 N.C. App. 484, 261 S.E.2d 223, aff'd, 300 N.C. 359, 266 S.E.2d 623 (1980).

Out-of-State Suspension as Basis for Revocation. — Under this section the Department (now Division) of Motor Vehicles must apply the period of revocation of the other state, since the person was a resident of the other state and was subject to and controlled by the laws of that state at the time the offense was committed. Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

Purpose of Subsection (f). — Subsection (f) is clearly designed to promote public safety on the highways and to protect motorists on North Carolina's highways from the hazards created by a person who has demonstrated disregard for the rules of safety while operating a motor vehicle. The enactment of laws to assure public safety on the state's highways is a valid exercise of the police power by the legislature. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Subsection (f) imposes no durational residency requirement to obtain a North Carolina driver's license, but requires only that the individual's license not be in a revoked status in another jurisdiction, and, consequently, does not violate the right to travel under the federal constitution. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Persons Whose Licenses Are Revoked Elsewhere and Then Move to State. — All people who, as the result of traffic convictions, have their licenses revoked in other jurisdictions and then move to North Carolina are treated similarly under subsection (f), which is all that is required by the equal protection clause of the U.S. Const., Amend. XIV. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the Superior Court of Wake County pursuant to G.S. 150B-45 and may not obtain a hearing under G.S. 20-25 in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

Applied in In re Frye, 32 N.C. App. 384, 232 S.E.2d 301 (1977).

Cited in Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946); Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977); Craig v. Faulkner, 151 N.C. App. 581, 565 S.E.2d 733, 2002 N.C. App. LEXIS 743 (2002).

§ 20-9.1. Physicians and psychologists providing medical information on drivers with physical and mental disabilities.

(a) Notwithstanding G.S. 8-53 for physicians and G.S. 8-53.3 for psychologists, or any other law relating to confidentiality of communications between physicians or psychologists and their patients, a physician or a psychologist duly licensed in the State of North Carolina may disclose after consultation with the patient to the Commissioner information about a patient who has a mental or physical disability that the physician or psychologist believes may affect the patient's ability to safely operate a motor vehicle. This information shall be limited to the patient's name, address, date of birth, and diagnosis.

(b) The information provided to the Commissioner pursuant to subsection (a) of this section shall be confidential and shall be used only for the purpose of determining the qualifications of the patient to operate a motor vehicle.

(c) A physician or psychologist disclosing or not disclosing information pursuant to this section is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the physician or psychologist was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. (1997-464, s. 1.)

§ 20-9.2. Selective service system registration requirements.

(a) Any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age shall be registered in compliance with the requirements of the Military Selective Service Act, 50 U.S.C. § 453 (1948), when applying for the issuance, renewal, or duplication of a drivers license, commercial drivers license, or identification card.

(b) The Division shall forward in an electronic format the necessary personal information of the applicants identified in subsection (a) of this section required for registration to the Selective Service System. An application for the issuance, renewal, or duplication of a drivers license, commercial drivers license, or identification card constitutes an affirmation that the applicant has already registered with the Selective Service System or that he authorizes the Division to forward the necessary information to the Selective Service System for registration. The Division shall notify the applicant that his application for the issuance, renewal, or duplication of a drivers license, commercial drivers license, or identification card serves as his consent to be registered with the Selective Service System pursuant to this section. (2002-162, s. 1.)

§ 20-9.3. Notification of requirements for sex offender registration.

The Division shall provide notice to each person who applies for the issuance of a drivers license, learner's permit, or instruction permit to operate a motor vehicle, and to each person who applies for an identification card, that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. (2006-247, s. 19(b).)

§ 20-10. Age limits for drivers of public passenger-carrying vehicles.

It shall be unlawful for any person, whether licensed under this Article or not, who is under the age of 18 years to drive a motor vehicle while in use as a public passenger-carrying vehicle. For purposes of this section, an ambulance when operated for the purpose of transporting persons who are sick, injured, or otherwise incapacitated shall not be treated as a public passenger-carrying vehicle.

No person 14 years of age or under, whether licensed under this Article or not, shall operate any road machine, farm tractor or motor driven implement of husbandry on any highway within this State. Provided any person may operate a road machine, farm tractor, or motor driven implement of husbandry upon a highway adjacent to or running in front of the land upon which such person lives when said person is actually engaged in farming operations. (1935, c. 52, s. 5; 1951, c. 764; 1967, c. 343, s. 4; 1971, c. 1231, s. 1.)

Local Modification. — Cumberland: 1965, c. 1152, s. 3.

§ 20-10.1. Mopeds.

It shall be unlawful for any person who is under the age of 16 years to operate a moped as defined in G.S. 105-164.3 upon any highway or public vehicular area of this State. (1979, c. 574, s. 8; 2002-72, s. 6.)

§ 20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

(a) Process. — Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. — Driving with a limited learner's permit.
(2) Level 2. — Driving with a limited provisional license.
(3) Level 3. — Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

(b) Level 1. — A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.
(2) Passes a written test administered by the Division.
(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

(c) Level 1 Restrictions. — A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.
(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.
(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.
(4) After the first six months after issuance, the permit holder may drive at any time.
(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.
(6) The permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway or public vehicular area.

(d) Level 2. — A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.
(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.
(3) Passes a road test administered by the Division.
(4) Has a driving eligibility certificate or a high school diploma or its equivalent.

(e) Level 2 Restrictions. — A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.

(5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area.

(f) Level 3. — A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. — The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license.

(h) Exception for Persons 16 to 18 Who Have an Unrestricted Out-of-State License. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following upon the submission of a driving eligibility certificate or a high school diploma or its equivalent:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superinten-

dent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(2a) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held both a learner's permit and a restricted license from another state for at least six months each, the Commissioner finds that the requirements for the learner's permit and restricted license are comparable to the requirements for a learner's permit and restricted license in this State, and the person has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a moving violation or a seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(h1) Exception for Persons 16 to 18 Who Have an Out-of-State Restricted License. — A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has a restricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

(1) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, held the restricted license issued by the other state for at least 12 months, and whose parent or guardian certifies that the person has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(2) A limited learners permit, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the restricted license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction

that would be a motor vehicle moving violation or seat belt infraction if committed in this State. A person who qualifies for a limited learners permit under this subdivision and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited learners permit in this State for each month the person held a restricted license in another state.

(h2) Exception for Persons Age 15 Who Have an Out-of-State Unrestricted or Restricted License. — A person who is age 15, who was a resident of another state, has an unrestricted or restricted drivers license issued by that state, and who becomes a resident of this State may obtain a limited learners permit if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction. A person who qualifies for a limited learners permit under this subsection and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited learners permit in this State for each month the person held an unrestricted or restricted license in another state.

(h3) Exception for Persons Less Than Age 18 Who Have a Federally Issued Unrestricted or Restricted License. — A person who is less than age 18, who has an unrestricted or restricted drivers license issued by the federal government, and who becomes a resident of this State may obtain a limited provisional license or a provisional license if the person has completed a drivers education program substantially equivalent to the drivers education program that meets the requirements of the Superintendent of Public Instruction. A person who qualifies for a limited provisional license or a provisional license under this subsection and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited provisional license or a provisional license in this State for each month the person held an unrestricted or restricted license issued by the federal government.

(i) Application. — An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be:

(1) The applicant's parent or guardian;
(2) A person approved by the applicant's parent or guardian; or
(3) A person approved by the Division.

(j) Duration and Fee. — A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is fifteen dollars ($15.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. — A supervising driver shall be a parent, grandparent, or guardian of the permit holder or license holder or a responsible person approved by the parent or guardian or the Division. A supervising driver shall be a licensed driver who has been licensed for at least five years. At least one supervising driver shall sign the application for a permit or license.

(*l*) Violations. — It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with the restriction regarding the use of a mobile telephone while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars ($25.00). Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subdivisions (1), (2), (3), (4), and (5) of subsection (e) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle.

(m) Insurance Status. — The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(n) Driving Eligibility Certificate. — A person who desires to obtain a permit or license issued under this section must have a high school diploma or its equivalent or must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:
  a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
  b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
  c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(1a) The person who is required to sign the certificate under subdivision (4) of this subsection also must show that one of the following requirements is met:
  a. The person who seeks a permit or license issued under this section is not subject to subsection (n1) of this section.
  b. The person who seeks a permit or license issued under this section is subject to subsection (n1) of this section and is eligible for the certificate under that subsection.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:
  a. The principal, or the principal's designee, of the public school in which the person is enrolled.
  b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
  c. The person who provides the academic instruction in the home school in which the person is enrolled.
  c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law.
  d. The designee of the board of directors of the charter school in which the person is enrolled.

e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(28), 115D-5(a3), or 115C-566, whichever is applicable, and may not be appealed under this Chapter.

(n1) Lose Control; Lose License.

(1) The following definitions apply in this subsection:

a. Applicable State entity. — The State Board of Education for public schools and charter schools, the State Board of Community Colleges for community colleges, or the Secretary of Administration for nonpublic schools and home schools.

b. Certificate. — A driving eligibility certificate that meets the conditions of subsection (n) of this section.

c. Disciplinary action. — An expulsion, a suspension for more than 10 consecutive days, or an assignment to an alternative educational setting for more than 10 consecutive days.

d. Enumerated student conduct. — One of the following behaviors that results in disciplinary action:

1. The possession or sale of an alcoholic beverage or an illegal controlled substance on school property.

2. The bringing, possession, or use on school property of a weapon or firearm that resulted in disciplinary action under G.S. 115C-391(d1) or that could have resulted in that disciplinary action if the conduct had occurred in a public school.

3. The physical assault on a teacher or other school personnel on school property.

e. School. — A public school, charter school, community college, nonpublic school, or home school.

f. School administrator. — The person who is required to sign certificates under subdivision (4) of subsection (n) of this section.

g. School property. — The physical premises of the school, school buses or other vehicles under the school's control or contract and that are used to transport students, and school-sponsored curricular or extracurricular activities that occur on or off the physical premises of the school.

h. Student. — A person who desires to obtain a permit or license issued under this section.

(2) Any student who was subject to disciplinary action for enumerated student conduct that occurred either after the first day of July before the school year in which the student enrolled in the eighth grade or after the student's fourteenth birthday, whichever event occurred first, is subject to this subsection.

(3) A student who is subject to this subsection is eligible for a certificate when the school administrator determines that the student has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

a. The enumerated student conduct occurred before the student reached the age of 15, and the student is now at least 16 years old.

b. The enumerated student conduct occurred after the student reached the age of 15, and it is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.

c. The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, as appropriate, or a mental health treatment program, and no other transportation is available.

(4) A student whose permit or license is denied or revoked due to ineligibility for a certificate under this subsection may otherwise be eligible for a certificate if, after six months from the date of the ineligibility, the school administrator determines that one of the following conditions is met:

a. The student has returned to school or has been placed in an alternative educational setting, and has displayed exemplary student behavior, as defined by the applicable State entity.

b. The disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property, and the student subsequently attended and successfully completed, as defined by the applicable State entity, a drug or alcohol treatment counseling program, as appropriate. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171; 1967, c. 694; 1969, c. 37; 1973, c. 191, ss. 1, 2; c. 664, ss. 1, 2; 1975, c. 79; c. 716, s. 5; 1979, c. 101; c. 667, ss. 15, 16, 41; 1981 (Reg. Sess., 1982), c. 1257, s. 2; 1989 (Reg. Sess., 1990), c. 1021, s. 11; 1991, c. 689, s. 326; 1993, c. 539, s. 319; 1994, Ex. Sess., c. 24, s. 14(c); 1997-16, s. 1; 1997-443, s. 32.20; 1997-507, s. 1; 1998-149, ss. 2.1, 2.2, 2.3, 2.4, 2.5; 1998-212, s. 9.21(c); 1999-243, ss. 1, 2; 1999-276, s. 1; 1999-387, s. 4; 1999-452, s. 9; 2001-194, s. 1; 2001-487, s. 51.5(a); 2002-73, ss. 1, 2; 2002-159, s. 30; 2005-276, s. 44.1(b); 2006-177, ss. 2-7.)

Editor's Note. — Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 491.

CASE NOTES

Conflicting Presumptions. — While this section created a presumption that plaintiff, mother of the driver, occupying the front passenger seat, had the right to control and direct the operation of the vehicle by her son, who was operating under a learner's permit, but the facts of the case also implicated a conflicting presumption, namely the rule of law that her husband as owner of the vehicle and a passenger there in the vehicle had the right to control and direct its operation unless he relinquished that right, based on plaintiff's and her husband's equal rights to control son's operation of the vehicle, person who actually exercised the right to control son's driving would bear responsibility therefor. McFetters v. McFetters, 98 N.C. App. 187, 390 S.E.2d 348, cert. denied, 327 N.C. 140, 394 S.E.2d 177 (1990).

Presumption of Control. — This section creates a presumption that the statutorily approved person occupying the front passenger seat has the right to control and direct the operation of the vehicle. Stanfield v. Tilghman ex rel. Stanfield, 117 N.C. App. 292, 450 S.E.2d 751 (1994), rev'd on other grounds, 342 N.C. 389, 464 S.E.2d 294 (1995).

While front seat passenger who was a licensed driver was presumed to have "the right to control" the vehicle, this presumption does not translate into an irrebuttable presumption "of control" so as to impute negligence or establish contributory negligence, as a matter of law, without regard for exigent circumstances or general negligence principles. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

Sanctions imposed under G.S. 1A-1-11 were not an abuse of discretion because the trial court found that there was absolutely no basis in the law for any negligence claim against a backseat passenger where it was not alleged that the passenger had any legal right or duty to control the operation of the motor vehicle driven by an underaged driver who was unlicensed under G.S. 20-11; further, there were insufficient allegations to establish a legal basis for liability for any vicarious liability, and plaintiffs' counsel had signed and certified the complaint as having merit. Harris v. DaimlerChrysler Corp., 180 N.C. App. 551, 638 S.E.2d 260, 2006 N.C. App. LEXIS 2500 (2006).

Statutorily Approved Person May Recover Damages. — The negligence of a driver, operating an automobile under a valid learner's permit pursuant to subsection (b), is not imputed to the statutorily approved person who occupies the seat next to the permittee and who has the right to control and direct the permittee's operation of the car. Therefore, the statutorily approved person is not precluded from recovering damages for personal injuries sustained as a result of the permittee's sudden negligence. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

If the permittee's negligent operation of a vehicle was imputed, in all instances as a matter of law to the supervising adult, such adults, including driver education instructors, would be less inclined to serve as supervisors over a permittee's practice driving, thus militating against our public policy and practice regarding drivers' education. Stanfield v. Tilghman, 342 N.C. 389, 464 S.E.2d 294 (1995).

Cited in Monk v. Cowan Transp., Inc., 121 N.C. App. 588, 468 S.E.2d 407 (1996).

OPINIONS OF ATTORNEY GENERAL

"Lose Control, Lose Your License" Legislation. — The application of G.S. 20-11(n1)(1)d.2. does not require a one-year loss of the driver's license or learner's permit for a home school student who used a weapon or firearm in a lawful manner under the supervision of his or her parent/guardian on the property of the parent/guardian. See opinion of Attorney General to R. Glen Peterson, General Counsel, N.C. Department of Administration, 2000 N.C. AG LEXIS 11 (6/5/2000).

§ 20-11.1: Repealed by Session Laws 1965, c. 410, s. 4.

§ 20-12: Repealed by Session Laws 1997-16, s. 6.

§ 20-12.1. Impaired supervision or instruction.

(a) It is unlawful for a person to serve as a supervising driver under G.S. 20-7(l) or G.S. 20-11 or as an approved instructor under G.S. 20-7(m) in any of the following circumstances:

(1) While under the influence of an impairing substance.

(2) After having consumed sufficient alcohol to have, at any relevant time after the driving, an alcohol concentration of 0.08 or more.

(b) An offense under this section is an implied-consent offense under G.S. 20-16.2. (1977, c. 116, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 9; 1993, c. 285, s. 2; 1997-16, s. 7; 1997-443, s. 32.20.)

Editor's Note. — Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

§ 20-13. Suspension of license of provisional licensee.

(a) The Division may suspend, with or without a preliminary hearing, the operator's license of a provisional licensee upon receipt of notice of the licensee's conviction of a motor vehicle moving violation, in accordance with subsection (b), if the offense was committed while the person was still a provisional licensee. As used in this section, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of this Chapter. However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(b) The Division may suspend the license of a provisional licensee as follows:

(1) For the first motor vehicle moving violation, the Division may not suspend the license of the provisional licensee.

(2) For conviction of a second motor vehicle moving violation committed within 12 months of the date the first offense was committed, the Division may suspend the licensee's license for up to 30 days.

(3) For conviction of a third motor vehicle moving violation committed within 12 months of the date the first offense was committed, the Division may suspend the licensee's license for up to 90 days.

(4) For conviction of a fourth motor vehicle moving violation committed within 12 months of the date the first offense was committed, the Division may suspend the licensee's license for up to six months.

The Division may, in lieu of suspension and with the written consent of the licensee, place the licensee on probation for a period of not more than 12 months on such terms and conditions as the Division sees fit to impose.

If the Division suspends the provisional licensee's license for at least 90 days without a preliminary hearing, the parent, guardian or other person standing in loco parentis of the provisional licensee may request a hearing to determine if the provisional licensee's license should be restored on a probationary status. The Division may wait until one-half the period of suspension has expired to hold the hearing. The Division may place the licensee on probation for up to 12 months on such terms and conditions as the Division sees fit to impose, if the licensee consents in writing to the terms and conditions of probation.

(c) In the event of conviction of two or more motor vehicle moving offenses committed on a single occasion, a licensee shall be charged, for purposes of this section, with only one moving offense, except as otherwise provided.

(d) The suspension provided for in this section is in addition to any other remedies which the Division may have against a licensee under other provisions of law; however, when the license of any person is suspended under this section and at the same time is also suspended under other provisions of law, the suspensions run concurrently.

(e) Repealed by Session Laws 1987, c. 869, s. 14, effective January 1, 1988. (1963, c. 968, s. 1; 1965, c. 897; 1967, c. 295, s. 1; 1971, c. 120, ss. 1, 2; 1973, c. 439; 1975, c. 716, s. 5; 1979, c. 555, s. 1; 1983, c. 538, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1101, s. 3; 1987, c. 744, ss. 3, 4; c. 869, s. 14.)

CASE NOTES

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

OPINIONS OF ATTORNEY GENERAL

Operation of Vehicle with Improper Taillights Is a Moving Violation. — See opinion of Attorney General to Mr. Henry M. Whitesides, Fourteenth Solicitorial District, 41 N.C.A.G. 211 (1971).

§ 20-13.1: Repealed by Session Laws 1979, c. 555, s. 2.

§ 20-13.2. Grounds for revoking provisional license.

(a) The Division must revoke the license of a person convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction.

(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is less than 21 years old, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

(c1) Upon receipt of notification from the proper school authority that a person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n), the Division must expeditiously notify the person that his or her permit or license is revoked effective on the tenth calendar day after the mailing of the revocation notice. The Division must revoke the permit or license of that person on the tenth calendar day after the mailing of the revocation notice. Notwithstanding subsection (d) of this section, the length of revocation must last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.
(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n1), then the revocation shall be for a period of one year.

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.
(2) A driving eligibility certificate as required under G.S. 20-11(n).

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n1), the Division shall restore a person's permit or license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(28), 115D-5(a3), or 115C-566, whichever is applicable, and may not be appealed under this Chapter.

(c2) The Division must revoke the permit or license of a person under the age of 18 upon receiving a record of the person's conviction for malicious use of an explosive or incendiary device to damage property (G.S. 14-49(b) and (b1)); conspiracy to injure or damage by use of an explosive or incendiary device (G.S. 14-50); making a false report concerning a destructive device in a public building (G.S. 14-69.1(c)); perpetrating a hoax concerning a destructive device in a public building (G.S. 14-69.2(c)); possessing or carrying a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property (G.S. 14-269.2(b1)); or causing, encouraging, or aiding a minor to possess or carry a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property (G.S. 14-269.2(c1)).

(d) The length of revocation under this section shall be one year. Revocations under this section run concurrently with any other revocations.

(e) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 33; 1987, c. 869, s. 12; 1989, c. 436, s. 3; 1993, c. 285, s. 8; 1995, c. 506, ss. 3, 4, 5; 1997-507, s. 2; 1999-243, s. 3; 1999-257, s. 4.)

Legal Periodicals. — For survey on new penalties for criminal behavior in schools, see 22 Campbell L. Rev. 253 (2000).

OPINIONS OF ATTORNEY GENERAL

Regarding the application of this section to three separate groups of drivers based upon when driving privileges were received, see opinion of Attorney General to Michael E. Ward, State Superintendent of Public Instruction, N.C. General Assembly, 1999 N.C.A.G. 11 (10/14/99).

§ 20-14. Duplicate licenses.

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.
(2) It is necessary to change the name or address on the license.
(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.
(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1981, c. 690, s. 11; 1983, c. 443, s. 3; 1991, c. 682, s. 2; c. 689, s. 327; 1991 (Reg. Sess., 1992), c. 1007, s. 28; 1995 (Reg. Sess., 1996), c. 675, s. 2; 2004-189, s. 5(b); 2005-276, s. 44.1(c).)

Editor's Note. — Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

CASE NOTES

Cited in State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838 (1970).

§ 20-15. Authority of Division to cancel license or endorsement.

(a) The Division shall have authority to cancel any driver's license upon determining any of the following:

(1) The licensee was not entitled to the issuance of the license under this Chapter.
(2) The licensee failed to give the required or correct information on the license application or committed fraud in making the application.
(3) The licensee is no longer authorized under federal law to be legally present in the United States.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.

(c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a commercial drivers license shall be prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4). (1935, c. 52, s. 10; 1943, c. 649, s. 3; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 2005-349, s. 5; 2007-56, s. 5.)

CASE NOTES

Cited in Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

§ 20-15.1. Revocations when licensing privileges forfeited.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A, 50-13.12, and 110-142.2. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies. (1994, Ex. Sess., c. 20, s. 2; 1995, c. 538, s. 2(a).)

§ 20-16. Authority of Division to suspend license.

(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not more than 80 miles per hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's license shall be suspended by the Division of

Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Aggressive driving	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Failure to yield right-of-way to pedestrian pursuant to G.S. 20-158(b)(2)b.	4
Failure to yield right-of-way to bicycle, motor scooter, or motorcycle	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Rail-highway crossing violation	6
Careless and reckless driving in violation of G.S. 20-140(f)	6
Speeding in violation of G.S. 20-141(j3)	6
Aggressive driving	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5

Failure to yield right-of-way to pedestrian pursuant to G.S. 20-158(b)(2)b.	5
Failure to yield right-of-way to bicycle, motor scooter, or motorcycle	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4
Speeding in a school zone in excess of the posted school zone speed limit	4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle	4
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately.

(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of fifty dollars ($50.00).

(e1) Notwithstanding any other provision of this Chapter, if the Division suspends the license of an operator pursuant to subdivisions (a)(9), (a)(10), or (a)(10a) of this section, upon the first suspension only, a district court judge may allow the licensee a limited driving privilege or license for a period not to exceed 12 months, provided he has not been convicted of any other motor vehicle moving violation within the previous 12 months. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)(1), (2), (3), (4), and (5).

(e2) If the Division revokes a person's drivers license pursuant to G.S. 20-17(a)(16), a judge may allow the licensee a limited driving privilege for a period not to exceed the period of revocation. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)(1), (2), (3), (4), (5), and (g). (1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; c. 1067, s. 13; 1949, c. 373, ss. 1, 2; c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130; 1967, c. 16; 1971, c. 234, ss. 1, 2; c. 793, ss. 1, 2; c. 1198, ss. 1, 2; 1973, c. 17, ss. 1, 2; 1975, c. 716, s. 5; 1977, c. 902, s. 1; 1979, c. 36; c. 667, ss. 18, 41; 1981, c. 412, s. 4; c. 747, ss. 33, 66; 1981 (Reg. Sess., 1982), c. 1256; 1983, c. 435, s. 10; c. 538, ss. 3-5; c. 798; 1983 (Reg. Sess., 1984), c. 1101, s. 4; 1987, c. 744, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 75; 1989, c. 784, s. 9; 1991, c. 682, s. 3; 1999-330, s. 7; 1999-452, s. 10; 2000-109, s. 7(d); 2000-117, s. 2; 2000-155, s. 10; 2001-352, s. 2; 2004-172, s. 3; 2004-193, ss. 2, 3; 2005-276, s. 44.1(d).)

Cross References. — As to period of suspension or revocation, see G.S. 20-19 and note to G.S. 20-17.

Editor's Note. — A reference to subdivisions (a)(1) through (a)(10a) of this section appears in the last paragraph of subsection (c) and in subsection (d). Subdivisions (a)(1) through (a)(4) were repealed by Session Laws 1979, c. 36.

Legal Periodicals. — For brief discussion of the 1949 amendments, see 27 N.C.L. Rev. 371, 372 (1949).

For article on administrative hearing for suspension of driver's license, see 30 N.C.L. Rev. 27 (1951).

For note as to effect of plea of nolo contendere, see 32 N.C.L. Rev. 549 (1954).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2315 (1997).

CASE NOTES

I. In General.
II. Specific Offenses.
III. Judicial Proceedings.
IV. Administrative Proceedings.

I. IN GENERAL.

Operation of Motor Vehicle on Highway Is a Personal Privilege. — A license to operate motor vehicles on the public highways of North Carolina is a personal privilege and property right which may not be denied a citizen of this State who is qualified therefor under its statutes. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

Albeit a Conditional One. — The right of a citizen to travel upon the public highways is a common right, but the exercise of that right may be regulated or controlled in the interest of public safety under the police power of the State. The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

And Licensee May Not Be Deprived of Such Privilege except as Provided by Statutes. — A license to operate a motor vehicle may be suspended or revoked only in accordance with statutory provisions as they are written and construed in this jurisdiction. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute. Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

Power to issue, suspend or revoke a driver's license is vested exclusively in the Division of Motor Vehicles, subject to review by the superior court and, upon appeal, by the appellate division. Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

Power to suspend or revoke a driver's license is exclusively in the Department (now Division) of Motor Vehicles, subject to review by the superior court. State v. Warren, 230 N.C. 299, 52 S.E.2d 879 (1949).

And No Discretionary Power Is Conferred on Superior Court. — Under subdivision (a)(10) of this section and G.S. 20-19(b), the discretionary authority to suspend petitioner's license for a period not exceeding 12 months was vested exclusively in the Division of Motor Vehicles. No discretionary power was conferred upon a superior court. Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

Where the facts as found by the trial court were in exact conformity with the suspension provisions of subdivision (a)(5), the Department (now Division) had complete authority by law to suspend petitioner's license, and the superior court judge had no authority to substitute his discretion for that of the Department (now Division). In re Grubbs, 25 N.C. App. 232, 212 S.E.2d 414 (1975).

When a person is convicted of a criminal offense, the court has no authority to pronounce judgment suspending or revoking his operator's license or prohibiting him from operating a motor vehicle during a specified period. State v. Cole, 241 N.C. 576, 86 S.E.2d 203 (1955).

Judicial Review of Suspensions and Revocations. — Discretionary suspension and revocations of licenses by the Department (now Division) of Motor Vehicles are reviewable under G.S. 20-25, but mandatory revocations under G.S. 20-17 are not so reviewable. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948). See State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944); Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); State v. Cole, 86 S.E.2d 203 (1955); Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

Provisions of Subsection (d) and Other Statutes Satisfy Requirements of Due Process. — The provisions of G.S. 20-48, together with the provisions of subsection (d) of this section, relating to the right of review, and the provisions of G.S. 20-25, relating to the right of appeal, satisfy the requirements of procedural due process. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Atwood, 27 N.C. App. 445, 219 S.E.2d 521 (1975), rev'd on other grounds, 290 N.C. 266, 225 S.E.2d 543 (1976).

Former Subdivision (a)(5) Unconstitutional. — Before its amendment in 1959, subdivision (a)(5) of this section provided for suspension of the license of a driver who was "an habitual violator of the traffic laws." This provision was held to be an unconstitutional grant of legislative power to the Department (now Division) of Motor Vehicles, since it did not contain any fixed standard or guide to which the Department (now Division) must conform but on the contrary left it to the sole discretion of the Commissioner of the Department (now Division) to determine when a driver was an habitual violator of the traffic laws. Harvel v. Scheidt, 249 N.C. 699, 107 S.E.2d 549 (1959), holding also that a point system set up and used by the Department (now Division) did not furnish an adequate standard or guide.

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

Applied in Whedbee v. Powell, 41 N.C. App. 250, 254 S.E.2d 645 (1979); Baggett v. Peters, 49 N.C. App. 435, 271 S.E.2d 581 (1980); Belk v. Peters, 63 N.C. App. 196, 303 S.E.2d 641 (1983).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Admin. Office, 293 N.C. 365, 239 S.E.2d 48 (1977); In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977); Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979); State v. Robinson, 40 N.C. App. 514, 253 S.E.2d 311 (1979); Noyes v. Peters, 40 N.C. App. 763, 253 S.E.2d 584 (1979); State v. MaGee, 75 N.C. App. 357, 330 S.E.2d 825 (1985); Davis v. Hiatt, 92 N.C. App. 748, 376 S.E.2d 44 (1989); State v. Nobles, 107 N.C. App. 627, 422 S.E.2d 78 (1992); 333 N.C. 787, 429 S.E.2d 716 (1993); Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003); State v. Scott, 167 N.C. App. 783, 607 S.E.2d 10 (2005); Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006).

II. SPECIFIC OFFENSES.

Enumerated Offenses Are "Moving Violations". — The legislature considered the enumerated offenses in this section, including "no operator's (now 'driver's') license," to be moving violations. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968).

Revocation or Suspension Not Mandatory for Reckless Driving. — The offense of reckless driving in violation of G.S. 20-140 is not an offense for which, upon conviction, the revocation or suspension of an operator's license is mandatory. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

Subdivision (a)(9) of This Section Did Not Repeal by Implication G.S. 20-17(6). — Section 20-17(6) authorizing the mandatory revocation of a driver's license upon two convictions of reckless driving within a 12-month period was not repealed by implication by the subsequent enactment of subdivision (a)(9) of this section authorizing the discretionary suspension of a driver's license upon one or more convictions of reckless driving and one or more convictions of speeding in excess of 44 (now 55) mph and not more than 75 (now 80) mph, within a 12-month period. Person v. Garrett, 280 N.C. 163, 184 S.E.2d 873 (1971).

Effect of Point System on Subdivision (a)(9). — The provisions of the 1959 amendment, establishing the point system, did not purport to repeal, modify or change in any manner the provisions of subdivision (a)(9) of this section. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

Hence, in canceling the points accumulated over the period stipulated in subsection (c) of this section, upon which a suspension may be ordered, such cancellation does not cancel or change the number of convictions upon which a license may be suspended under the provisions of subdivision (a)(9). Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

The Department (now Division) of Motor Vehicles properly suspends a motor vehicle operator's license upon proof that the licensee had been convicted of speeding 60 miles per hour in a 50-mile-per-hour zone on two separate occasions within a 12-month period, even though one of the occasions had theretofore been used as the basis for a prior suspension of the license. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

Conviction of Drunken Driving in Another State. — Upon a receipt of notification from the highway department of another state that a resident of this State had there been convicted of drunken driving, the Department (now Division) of Motor Vehicles has the right to suspend the driving license of such person. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

Failure to Appear for Trial for Driving Under the Influence in Another State. — Motorist who received citation for driving under the influence in South Carolina and then forfeited bond by not appearing in court had his driver's license properly revoked even though no warrant was issued. Sykes v. Hiatt, 98 N.C. App. 688, 391 S.E.2d 834 (1990).

Revocation of License in Another State. — North Carolina Department of Transportation Division of Motor Vehicles may suspend the license of a driver whose license was suspended in another state, even though it was later reinstated in that state. Olive v. Faulkner, 148 N.C. App. 187, 557 S.E.2d 642, 2001 N.C. App. LEXIS 1267 (2001).

III. JUDICIAL PROCEEDINGS.

Conviction Must Be Followed by Appealable Judgment. — In view of the provision in G.S. 20-24(c) to the effect that a "conviction," when used in this Article, shall mean a final conviction, it would seem that before a license may be revoked pursuant to the provisions of this section, there must be a conviction of two or more offenses enumerated in subdivision (a)(9) of this section, followed by a judgment from which an appeal might have been or may be taken. Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

Conviction Is Not Final Where Prayer for Judgment Is Continued on Payment of Costs. — Where, in prosecutions for speeding, prayer for judgment is continued upon payment of the costs, there are no final convictions within the purview of G.S. 20-24(c), and defendant's license to drive may not be revoked pursuant to this section. Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

Judgment in Excess of Jurisdiction of Court. — A judgment of the superior court requiring a defendant to surrender his license to drive a motor vehicle and prohibiting him from operating such vehicles for a specified period is in excess of the jurisdiction of such court and is void. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944).

A provision in a judgment in a prosecution for violation of a statutory provision regulating the operation of motor vehicles, that defendant's license be surrendered and that defendant not operate a motor vehicle on the public highways for a stipulated period, is void and will be stricken on appeal. State v. Warren, 230 N.C. 299, 52 S.E.2d 879 (1949).

Court May Make Surrender of License a Condition to Suspension of Sentence. — While the Department (now Division) of Motor Vehicles is given the exclusive authority to suspend or revoke a driver's license, a court, either upon a plea of guilty or nolo contendere, may make the surrender of defendant's driver's license a condition upon which prison sentence or other penalty is suspended. Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954).

IV. ADMINISTRATIVE PROCEEDINGS.

Suspension of License a Civil Proceeding. — A proceeding to suspend an operator's license under this section is civil and not criminal in its nature. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

Section Construed with G.S. 20-23. — This section and G.S. 20-23 are parts of the same statute relating to the same subject matter and must be construed in pari materia. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

This section is the real source of authority. Section 20-23 prescribes a rule of evidence and adds the power of revocation, when this section is the basis of action. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Extraterritorial Jurisdiction Not Conferred. — The words "other satisfactory evidence" in this section refer to the form of notice of conviction in another state, and confer no extraterritorial jurisdiction of the offense itself. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

This section and G.S. 20-23 do not contemplate a suspension or revocation of license by reason of a conviction in North Carolina of an alleged offense committed beyond its borders. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

But Evidence Relative to Offenses outside State May Be Considered. — It is proper for the Department's (now Division's) hearing agent to hear and consider evidence bearing on guilt and innocence, among other things, relative to offenses outside the State, as assist him in reaching a decision in the exercise of discretionary authority. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

Effect of Conviction or Plea of Nolo Contendere to Offense Requiring Mandatory Revocation. — Where the Department (now Division) of Motor Vehicles suspends or revokes a driver's license under the provisions of this section, the Department (now Division) must notify the licensee, and upon request afford him a hearing which is de novo, with right of appeal as prescribed by this section, and where the Department (now Division) elects to proceed under this section, it may not contend that the licensee has no right of appeal because of a conviction of or a plea of nolo contendere to an offense requiring mandatory revocation of license. Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954).

Division Not Required to Have Valid Warrant or Valid Judgment in Files. — This section authorizes the Department (now Division) to suspend the license of any driver with or without preliminary hearing upon a showing by its records that the licensee has committed an enumerated offense. It does not require the Department (now Division) to have in its files a "valid warrant" nor a "valid judgment" before it is authorized to take action. Tilley v. Garrett, 8 N.C. App. 556, 174 S.E.2d 617 (1970).

"Satisfactory Evidence". — This section uses the phrase "satisfactory evidence." Satisfactory evidence is such as a reasonable mind might accept as adequate to support a conclusion. It is equivalent to sufficient evidence, which is defined to be such evidence as in amount is adequate to justify the court or jury in adopting the conclusion in support of which it was adduced. Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954).

Admissibility of Division Records. — The records of the Department (now Division) of Motor Vehicles, properly authenticated, are competent for the purpose of establishing the status of a person's operator's license and driving privilege. State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

A defendant is entitled to have the contents of the official record of the status of his driver's license limited, if he so requests, to the formal parts thereof, including the certification and seal, plus the fact that under official action of the Department (now Division) of Motor Vehicles the defendant's license was in a state of revocation or suspension on the date he is charged with committing the offense under G.S. 20-28. State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

Burden of Proof. — In the administrative hearing under subsection (d) of this section the burden of proof is upon the Department (now Division) to show "good cause" for extending the suspension of petitioner's license. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Upon the hearing held under subsection (d) of this section the burden is upon the Department (now Division) to show that petitioner has willfully refused to take the test. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Right of Licensee to Be Confronted by and Cross-Examine Adverse Witness. — At the administrative hearing, under subsection (d) of this section, the licensee has the right to be confronted by any witness whose testimony is used against him and to cross-examine the witness if he so desires. However, this is a right which the licensee waives if he does not assert it in apt time. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

When Licensee Entitled to Review. — A licensee is entitled to a review whenever the suspension, cancellation, or revocation of a license is made in the discretion of the Department (now Division) of Motor Vehicles, whether under this section, or G.S. 20-23, or any other provision of the statute. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

Remedy for Improper Deprivation of License. — If a person has been improperly deprived of his license by the Department (now Division) of Motor Vehicles due to mistake in law or fact, his remedy is to apply for a hearing as provided by subsection (d) of this section, or by petitioning the superior court pursuant to G.S. 20-25. At a hearing under either of these statutory provisions, he would be permitted to show that the suspension was erroneous. One cannot contemptuously ignore the quasi-judicial determinations made by the Department (now Division) of Motor Vehicles. Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960).

OPINIONS OF ATTORNEY GENERAL

Operation of Vehicle with Improper Taillights Carries Two Points as a Moving Violation. — See opinion of Attorney General to Mr. Henry M. Whitesides, Fourteenth Solicitorial District, 41 N.C.A.G. 211 (1971).

§ 20-16.01. Double penalties for offenses committed while operating a commercial motor vehicle.

Any person who commits an offense for which points may be assessed pursuant to the Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle as provided in G.S. 20-16(c) may be assessed double the amount of any fine or penalty authorized by statute. (1999-330, s. 8.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1999-330, s. 10 having been 20-16A.

§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders.

(a) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 30 days the license of any driver without preliminary hearing on receiving a record of the driver's conviction of either (i) exceeding by more than 15 miles per hour the speed limit, either within or outside the corporate limits of a municipality, if the person was also driving at a speed in excess of 55 miles per hour at the time of the offense, or (ii) driving at a speed in excess of 80 miles per hour at the time of the offense.

(b)(1) Upon a first conviction only of violating subsection (a), the trial judge may when feasible allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. For purposes of determining whether conviction is a first conviction, no prior offense occurring more than seven years before the date of the current offense shall be considered. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Division of Motor Vehicles along with any driver's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for 30 days from the date of issuance by trial court. Such permit shall constitute a valid license to operate motor vehicles of the class or type that would be allowed by the person's license if it were not currently revoked upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to driver's license, not by their nature, rendered inapplicable.

(2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and content as follows:

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
COUNTY OF ______	RESTRICTED DRIVING PRIVILEGES

This cause coming on to be heard and being heard before the Honorable ______, Judge presiding, and it appearing to the court that the defendant, ______, has been convicted of the offense of excessive speeding in violation of G.S. 20-16.1(a), and it further appearing to the court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of G.S. 20-16.1(b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name: ______

Race: ______ Sex: ______

Height: ______ Weight: ______

Color of Hair: ______ Color of Eyes: ______

Birth Date: ______

Driver's License Number: ______

Signature of Licensee: ______

Conditions of Restriction: ______

Type of Vehicle: ______

Geographic Restrictions: ______

Hours of Restriction: ______

Other Restrictions: ______

This limited license shall be effective from ______ to ______ subject to further orders as the court in its discretion may deem necessary and proper.

This the ______ day of ______, ______.

______

(Judge Presiding)

(3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to a district court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.

(4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been suspended as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.

(5) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(c) Upon conviction of a similar second or subsequent offense which offense occurs within one year of the first or prior offense, the license of such operator shall be suspended for 60 days, provided such first or prior offense occurs subsequent to July 1, 1953.

(d) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 60 days the license of any driver without preliminary hearing on receiving a record of such driver's conviction of having violated the laws against speeding described in subsection (a) and of having violated the laws against reckless driving on the same occasion as the speeding offense occurred.

(e) The provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law.

(f) Repealed by Session Laws 1987, c. 869, s. 14.

(g) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133; 1975, c. 716, s. 5; c. 763; 1979, c. 667, ss. 19, 41; 1983, c. 77; 1987, c. 869, ss. 13, 14; 1989, c. 436, s. 4; 770, s. 57; 1995 (Reg. Sess., 1996), c. 652, s. 2; 1999-456, s. 59; 2004-199, s. 13(a).)

Cross References. — As to mandatory revocation of license for refusal to submit to chemical test to determine alcoholic content of blood, see G.S. 20-16.2.

CASE NOTES

The operation of a motor vehicle on a public highway is not a natural right. It is a conditional privilege which the State in the interest of public safety acting under its police power may regulate or control, and the State may suspend or revoke the driver's license. Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960).

This section was enacted to promote highway safety by providing for the mandatory suspension of a driver's license upon conviction of excessive speeding and reckless driving. Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960).

And Not to Punish Licensee. — The suspension or revocation of a driver's license is no part of the punishment for the violation or violations of traffic laws. The purpose of the suspension or revocation of a driver's license is to protect the public and not to punish the licensee. Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960).

It Applies to Violation of G.S. 20-141(d). — This section applies where a driver is convicted of driving his passenger automobile at a speed of 75 miles per hour on a public highway in a 45-mile-per-hour speed zone established under subsection (d) of G.S. 20-141. Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960).

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

Nolo Contendere Has Same Effect as Conviction. — As a basis for suspension or revocation of an operator's license, a plea of nolo contendere has the same effect as a conviction or plea of guilty of such offense. Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

Cited in Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968); Rice v. Peters, 48 N.C. App. 697, 269 S.E.2d 740 (1980).

OPINIONS OF ATTORNEY GENERAL

Limited Driving Privilege May Not Be Extended to Cover Discretionary Revocation by Division. — Subsection (b) applies to offenses of speeding 71 mph through 75 mph, speeds in excess of 75 mph, and speeds in excess of 80 mph. When a limited permit is issued pursuant to subsection (b) of this section by the court upon conviction or a plea of guilty to a speeding charge requiring a mandatory 30-day revocation and such speed is such as to give rise to a discretionary revocation by the Division of Motor Vehicles for a greater period, the limited driving privilege issued by the court may not be extended to cover the revocation by the Division of Motor Vehicles. See Opinion of Attorney General to Mr. E. Burt Aycock, Jr., Assistant District Attorney, 45 N.C.A.G. 112 (1975).

§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

(a) Basis for Officer to Require Chemical Analysis; Notification of Rights. — Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent offense may obtain a chemical analysis of the person.

Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

(1) You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

(2) Repealed by Session Laws 2006-253, s. 15, effective December 1, 2006, and applicable to offenses committed on or after that date.

(3) The test results, or the fact of your refusal, will be admissible in evidence at trial.

(4) Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(5) After you are released, you may seek your own test in addition to this test.

(6) You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

(a1) Meaning of Terms. — Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued.

(b) Unconscious Person May Be Tested. — If a law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the law enforcement officer may direct the taking of a blood sample or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. — A law enforcement officer or chemical analyst shall designate the type of test or tests to be given and may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. — Whenever a person refuses to submit to a chemical analysis, a person has an alcohol concentration of 0.15 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the law enforcement officer and the chemical analyst shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The officer shall immediately mail the affidavit(s) to the Division. If the officer is also the chemical analyst who has notified the person of the rights under subsection (a), the officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. — Upon receipt of a properly executed affidavit required by subsection (c1), the

Division shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing shall be conducted in the county where the charge was brought, and shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis.

If the Division finds that the conditions specified in this subsection are met, it shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. — If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. — If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court district or set of districts defined in G.S. 7A-41.1, where the charges were made, within 30 days thereafter for a hearing on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

(e1) Limited Driving Privilege after Six Months in Certain Instances. — A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;
(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;
(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
(4) The implied consent offense charged did not involve death or critical injury to another person;
(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
    a. Other than by conviction; or
    b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;
(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;
(7) The person's license has been revoked for at least six months for the refusal; and
(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. — When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. — A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against you in any implied consent offense that may arise;

(2) Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(3) That if you fail to comply fully with the test procedures, the officer may charge you with any offense for which the officer has probable cause, and if you are charged with an implied consent offense, your refusal to submit to the testing required as a result of that charge would result in revocation of your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant. (1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1; 1971, c. 619, ss. 3-6; 1973, c. 206, ss. 1, 2; cc. 824, 914; 1975, c. 716, s. 5; 1977, c. 812; 1979, c. 423, s. 2; 1979, 2nd Sess., c. 1160; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 87; c. 435, s. 11; 1983 (Reg. Sess., 1984), c. 1101, ss. 5-8; 1987, c. 797, s. 3; 1987 (Reg. Sess., 1988), c. 1037, ss. 76, 77; c. 1112; 1989, c. 771, ss. 13, 14, 18; 1991, c. 689, s. 233.1(c); 1993, c. 285, ss. 3, 4; 1995, c. 163, s. 1; 1997-379, ss. 3.1-3.3; 1998-182, s. 28; 1999-406, ss. 1, 10; 2000-155, s. 5; 2006-253, s. 15; 2007-493, ss. 25, 27.)

Cross References. — For definition of "public vehicular area," see G.S. 20-4.01, subdivision (32). As to the availability of test records, see G.S. 20-27.

Editor's Note. — Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Effect of Amendments. — Session Laws 2007-493, s. 25, effective August 30, 2007, inserted "district or set of districts defined in G.S. 7A-41.1, where the charges were made, within 30 days thereafter" in the first sentence of subsection (e).

Session Laws 2007-493, s. 27, effective December 1, 2007, and applicable to offenses committed on or after that date, substituted "concentration of 0.15" for "concentration of 0.16" in the introductory paragraph of subsection (c1).

Legal Periodicals. — For comment on chemical tests and implied consent, see 42 N.C.L. Rev. 841 (1964).

For article on tests for intoxication, see 45 N.C.L. Rev. 34 (1966).

For survey of 1978 law on criminal procedure, see 57 N.C.L. Rev. 1007 (1979).

For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

For note discussing North Carolina's validation of the warrantless seizure of blood from an unconscious suspect, in light of State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985), see 21 Wake Forest L. Rev. 1071 (1986).

For note, "North Carolina and Pretrial Civil Revocation of an Impaired Driver's License and the Double Jeopardy Clause," see 18 Campbell L. Rev. 391 (1996).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2315 (1997).

CASE NOTES

I. In General.
II. Administration of Test.
III. Revocation of License for Refusal to Take Test.
IV. Evidence in Prosecution for Drunken Driving.

I. IN GENERAL.

Editor's Note. *— Many of the cases annotated below were decided under this section as it read prior to the 1993 amendment which reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

Because this section imposes a penalty, it must be strictly construed. Price v. North Carolina Dep't of Motor Vehicles, 36 N.C. App. 698, 245 S.E.2d 518, appeal dismissed, 295 N.C. 551, 248 S.E.2d 728 (1978), overruled on other grounds, Seders v. Powell, 298 N.C. 453, 259 S.E.2d 518 (1979).

Construction with G.S. 20-138.1. — A civil superior court determination, on appeal from an administrative hearing, pursuant to this section, regarding an allegation of willful refusal, estops the relitigation of that same issue in a defendant's criminal prosecution for DWI. The district attorney and the Attorney General both represent the interests of the people of North Carolina, regardless of whether it be the district attorney in a criminal trial court or the Attorney General in a civil or criminal appeal. State v. Summers, 351 N.C. 620, 528 S.E.2d 17, 2000 N.C. LEXIS 351 (2000).

Though this section must be read in conjunction with G.S. 20-139.1 to determine the procedures governing the administering of chemical analyses, this section, and that statute alone, sets forth the procedures governing notification of rights pursuant to a chemical analysis. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994).

Consent Deemed Given. — Anyone who operates a motor vehicle upon the highways of the State is deemed to have given consent to a breathalyzer test. State v. Allen, 14 N.C. App. 485, 188 S.E.2d 568 (1972).

Purpose of Procedures. — The administrative procedures provided for in this section are designed to promote breathalyzer tests as a valuable tool for law-enforcement officers in their enforcing the laws against driving under the influence while also protecting the rights of the State's citizens. Rice v. Peters, 48 N.C. App. 697, 269 S.E.2d 740 (1980).

The purpose of administering the breathalyzer test is to produce an accurate result. Bell v. Powell, 41 N.C. App. 131, 254 S.E.2d 191 (1979).

The purpose of the statute is fulfilled when the arrestee is given the option to submit or refuse to submit to a breathalyzer test and his decision is made after having been advised of his rights in a manner provided by the statute. Rice v. Peters, 48 N.C. App. 697, 269 S.E.2d 740 (1980).

Option to Refuse Is Not Constitutionally Mandated. — This section only "coerces" a breathalyzer test in the limited instances in which the law-enforcement officer has reasonable grounds to believe that the driver has violated the law. In such situations the State could constitutionally require that the driver submit to an examination without any option to refuse. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

The State is not constitutionally required to give an accused an option to refuse the breathalyzer test. Etheridge v. Peters, 45 N.C. App. 358, 263 S.E.2d 308, aff'd, 301 N.C. 76, 269 S.E.2d 133 (1980).

Effect of Refusal. — Persons being requested to submit to chemical analysis do not have to be informed that a refusal can result in the denial of their right to seek a limited driving privilege as a part of the notification requirement of this section. Nowell v. Killens, 119 N.C. App. 567, 459 S.E.2d 37 (1995).

Nor Is It Impermissible for State to Allow Option. — It is not impermissible nor a violation of equal protection of the laws for the State to allow drivers an option of refusing a breathalyzer examination that could be constitutionally required in exchange for risking license suspension of six months if the proper procedures are followed and the officer has probable cause to believe that the accused has driven a motor vehicle while under the influence of intoxicating liquor (now has committed an implied-consent offense). Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

The statutory distinction under this section is based on whether a motorist refuses to submit to a breath test. Since the motorist may not be subjected to such a test unless, pursuant to subsection (d) of this section, the law-enforcement officer has reasonable grounds to believe the person had been driving or operating a motor vehicle upon a highway or public vehicular area while under the influence of intoxicating liquor (now had committed an implied-consent offense), the State could have required that the motorist submit to the test without any refusal option and without any infringement of the constitutional rights against self-incrimination or against unreasonable searches and seizures. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

Unconscious Driver. — Requiring the arrest of an unconscious driver would serve no sensible purpose; in such a case, the formal requirements of subsection (a) of this section are not meant to apply. State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985).

In a prosecution for involuntary manslaughter and driving under the influence, the performance of a blood alcohol test on blood seized from an unconscious defendant pursuant to subsection (b) of this section did not violate the defendant's rights under U.S. Const., Amend. IV and N.C. Const., Art. 1, § 20, relating to search and seizure, because of (1) the existence of probable cause to arrest; (2) the limited nature of the intrusion upon the person; and (3) the destructibility of the evidence. State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985).

Where defendant was already sedated and unconscious when a police officer arrived at a hospital to obtain a blood sample for chemical analysis such that officer did not advise defendant of his right to refuse the test, the trial court properly concluded that defendant was rendered unconscious by the doctors based solely on a medical decision to treat him, that the officer had nothing to do with this decision, and that defendant's statutory rights were not violated in that the officer who conducted the chemical analysis complied with the requirements of this section and G.S. 20-139.1. State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993).

Notice. — Police officer's placement of written rights form with defendant's emergency room chart was tantamount to "giving" defendant notice in writing; in light of the treatment defendant was receiving for his injuries, there was effectively no other means by which the notice could have been given to him. State v. Lovett, 119 N.C. App. 689, 460 S.E.2d 177 (1995).

Reasonable Grounds Synonymous with Probable Cause. — In determining whether a charging officer had reasonable grounds to believe a petitioner committed an implied consent offense within the meaning of this section, the term reasonable grounds should be viewed as synonymous with probable cause. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

This section does not limit the introduction of other competent evidence as to a defendant's alcohol concentration, including other chemical tests. This statute allows other competent evidence of a defendant's blood alcohol level in addition to that obtained from chemical analysis pursuant to this section and G.S. 20-139.1. State v. Drdak, 330 N.C. 587, 411 S.E.2d 604 (1992).

Relation to DWI Charge. — The decision by Division of Motor Vehicles (DMV) to rescind the revocation of defendant's driver's license was independent of, and inconsequential to, defendant's criminal trial for driving while impaired (DWI). State v. O'Rourke, 114 N.C. App. 435, 442 S.E.2d 137 (1994).

Collateral Estoppel — Privity of Parties. — The state is collaterally estopped from litigating issues in a criminal DWI case when those exact issues have been relitigated in a civil license revocation hearing with the Attorney General representing the DMV in superior court; defendant was found to have not refused to take the breathalyzer test in the earlier proceeding, so that the results of the single breath analysis were inadmissible, and privity of parties existed, as both the Attorney General and the District Attorney represent the same party, which is the people of the State of North Carolina. State v. Summers, 132 N.C. App. 636, 513 S.E.2d 575, 1999 N.C. App. LEXIS 275 (1999), aff'd, 351 N.C. 620, 528 S.E.2d 17 (2000).

Revocation of driving privileges was not barred by collateral estoppel. The dismissal of a driver's criminal case due to a violation of his right to have a witness present during the chemical test did not reach the issue of whether his refusal to take the test was willful under G.S. 20-16.2(d). Powers v. Tatum, — N.C. App. —, 676 S.E.2d 89, 2009 N.C. App. LEXIS 527 (2009).

The quantum of proof necessary to establish probable cause to arrest in criminal driving while impaired cases and civil license revocation proceedings, notwithstanding the different burdens on the remaining elements, is virtually identical. Brower v. Killens, 122 N.C. App. 685, 472 S.E.2d 33 (1996), discretionary review improvidently allowed, 345 N.C. 625, 481 S.E.2d 86 (1997).

Applied in Durland v. Peters, 42 N.C. App. 25, 255 S.E.2d 650 (1979); Harper v. Peters, 42 N.C. App. 62, 255 S.E.2d 791 (1979); State v. McLawhorn, 43 N.C. App. 695, 260 S.E.2d 138 (1979); Rawls v. Peters, 45 N.C. App. 461, 263 S.E.2d 330 (1980); Byrd v. Wilkins, 69 N.C. App. 516, 317 S.E.2d 108 (1984); State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984); State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994); Gibson v. Faulkner, 132 N.C. App. 728, 515 S.E.2d 452 (1999); State v. Streckfuss, 171 N.C. App. 81, 614 S.E.2d 323, 2005 N.C. App. LEXIS 1190 (2005).

Cited in Church v. Powell, 40 N.C. App. 254, 252 S.E.2d 229 (1979); State v. Harper, 82 N.C. App. 398, 346 S.E.2d 223 (1986); State v. Knoll, 84 N.C. App. 228, 352 S.E.2d 463 (1987); State v. Bumgarner, 97 N.C. App. 567, 389 S.E.2d 425 (1990); State v. Jones, 106 N.C. App. 214, 415 S.E.2d 774 (1992); State v. Nobles, 107 N.C. App. 627, 422 S.E.2d 78 (1992); Melton v. Hodges, 114 N.C. App. 795, 443 S.E.2d 83 (1994); Nowell v. Killens, 119 N.C. App. 567, 459 S.E.2d 37 (1995); State v. Pyatt, 125 N.C. App. 147, 479 S.E.2d 218 (1997); Ferguson v. Killens, 129 N.C. App. 131, 497 S.E.2d 722 (1998); State v. Bartlett, 130 N.C. App. 79, 502 S.E.2d 53 (1998); State v. Summers, 351 N.C. 620, 528 S.E.2d 17, 2000 N.C. LEXIS 351 (2000); State v. Jacobs, 162 N.C. App. 251, 590 S.E.2d 437, 2004 N.C. App. LEXIS 119 (2004).

II. ADMINISTRATION OF TEST.

Administration of breathalyzer test is not dependent upon the legality of the arrest, but hinges solely upon the law-enforcement officer having reasonable grounds to believe the person to have been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating liquor (now committed an implied-consent offense). State v. Eubanks, 283 N.C. 556, 196 S.E.2d 706 (1973); State v. Stewardson, 32 N.C. App. 344, 232 S.E.2d 308 (1977); In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

Subsection (a) of this section provides that administration of the breathalyzer test hinges solely upon the law-enforcement officer having reasonable grounds to believe the person to have been operating a motor vehicle on the highway while under the influence of intoxicating liquor (now committed an implied-consent offense), and not upon the illegality of the arrest for that offense. In re Pinyatello, 36 N.C. App. 542, 245 S.E.2d 185 (1978).

Officers Authorized to Request Test. — Subsection (c) of this section does not provide that the "arresting officer" (now charging officer) is the sole person authorized to request that the petitioner submit to the test. The phrase "arresting officer" (now charging officer) merely distinguishes between the two law-enforcement officers present at the administration of the test and makes it clear that the breathalyzer operator who gives the warning set out in subsection (a) of this section is not the officer authorized to request that the petitioner take the test. Oldham v. Miller, 38 N.C. App. 178, 247 S.E.2d 767 (1978).

Considering the 1973 amendments to subsections (a) and (c) of this section together it is clear that the modification in subsection (c) that changed the phrase "law-enforcement officer" to "arresting officer" (now charging officer) was designed to distinguish between the law-enforcement officer with reasonable grounds to believe that the suspect was driving under the influence of alcohol (now committed an implied-consent offense) and the law-enforcement officer who is to administer the test and give the warning. Oldham v. Miller, 38 N.C. App. 178, 247 S.E.2d 767 (1978).

Notice of Rights. — Where defendant was convicted of driving while impaired, the trial court did not err in denying defendant's motion to suppress intoxilyzer test results, as the police officer's placing of a copy of defendant's rights in front of defendant was sufficient to comply with G.S. § 20-16.2(a), even though the officer did not physically hand the copy to defendant. State v. Thompson, 154 N.C. App. 194, 571 S.E.2d 673, 2002 N.C. App. LEXIS 1399 (2002).

Notice of Rights Need Not Precede Request to Submit to Test. — Subsection (c) of this section does not require that the accused be requested to submit to a breathalyzer test after being informed of his statutory rights. Rice v. Peters, 48 N.C. App. 697, 269 S.E.2d 740 (1980).

One Request by Officer Sufficient. — Petitioner's contention that he did not willfully refuse to submit to a chemical analysis at the request of the charging officer since the officer did not request any additional chemical analysis after the first test was completed was without merit, as the statutes require the charging officer to request a chemical analysis based on sequential breath samples, not a sequence of requests for separate chemical analyses, and thus officer's original request that petitioner submit to a chemical analysis was sufficient to comply with the requirements of subsection (c) of this section. Tolbert v. Hiatt, 95 N.C. App. 380, 382 S.E.2d 453 (1989).

Accused Need Not Be Warned That Results May Be Used against Him. — An accused subjected to a blood or breath test need not be warned that the results may be used against him. State v. Sykes, 20 N.C. App. 467, 201 S.E.2d 544, aff'd, 285 N.C. 202, 203 S.E.2d 849 (1974).

As breathalyzer results are not testimonial evidence, Miranda warnings are not required prior to administering a breathalyzer. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, 319 N.C. 227, 353 S.E.2d 404 (1987).

But before the test is administered, an accused must be permitted to call an attorney and to select a witness to observe testing procedures. State v. Sykes, 20 N.C. App. 467, 201 S.E.2d 544, aff'd, 285 N.C. 202, 203 S.E.2d 849 (1974).

Right to Blood Test. — The trial court acted within its discretion in rejecting the defendant's allegation that he had requested and been denied a blood test, where the defendant was given an opportunity to use the telephone to make certain calls to his girlfriend and attorney and could have called, but did not call, a medical expert or hospital for the purposes of conducting a blood test. State v. Tappe, 139 N.C. App. 33, 533 S.E.2d 262, 2000 N.C. App. LEXIS 801 (2000).

Right to Have a Witness to Breathalyzer Test. — To deny a defendant access to a witness to observe his breathalyzer test when the State's sole evidence of the offense of driving while impaired is the personal observations of the authorities would constitute a flagrant violation of defendant's constitutional right to obtain witnesses under N.C. Const., Art. 1, § 23 as a matter of law and would require that the charges be dismissed. State v. Ferguson, 90 N.C. App. 513, 369 S.E.2d 378, cert. denied, 323 N.C. 367, 373 S.E.2d 551 (1988).

Where officer refused defendant's unequivocal request that his wife be permitted to observe his taking of breathalyzer test, the trial court erred in admitting the results of the breathalyzer test at trial; fact that defendant later did take the breathalyzer, after he was first refused permission to have his wife witness the test, could not be construed to be a waiver of his right to have a witness. State v. Myers, 118 N.C. App. 452, 455 S.E.2d 492 (1995).

Although a witness who arrived to observe intoxilyzer testing failed to specifically tell the front desk why she was at the police station, defendant's G.S. 20-16.2(a) right to have the witness present during the test was violated as the arresting officer knew the witness was en route, the witness timely arrived at the police station, and the witness made a reasonable effort to make her presence known. State v. Hatley, 190 N.C. App. 639, 661 S.E.2d 43, 2008 N.C. App. LEXIS 1013 (2008).

Failure to Indicate Desire to Have Witness as Waiver. — Petitioner, having failed to indicate at the time he refused to take breathalyzer examination test that he desired to have a witness present, waived his statutory right to delay the test until after his witness arrived, even if the witness arrived within the 30-minute period. McDaniel v. DMV, 96 N.C. App. 495, 386 S.E.2d 73, cert. denied, 326 N.C. 364, 389 S.E.2d 815 (1990).

The effect of subsection (a) of this section is to require a defendant to exercise his rights in a timely manner. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281 (1977).

Subsection (a) Complied with. — Having placed the information required by subsection (a) in writing before the defendant, the operator was not required to make defendant read it. The operator complied fully with the statute when he orally advised defendant and placed the required information in writing before defendant with the opportunity on defendant's part to read the same. State v. Carpenter, 34 N.C. App. 742, 239 S.E.2d 596 (1977), cert. denied, 294 N.C. 183, 241 S.E.2d 518 (1978).

Where defendant was informed of his rights, signed a form containing those rights and submitted to the chemical analysis, defendant was adequately notified of his rights as required by subsection (a). State v. Watson, 122 N.C. App. 596, 472 S.E.2d 28 (1996).

Right to Counsel. — When a defendant was arrested for driving while impaired, his right to consult with counsel as specified in G.S. 20-16.2(a)(6) controlled over the right stated in G.S. 15A-105(5) because anyone who accepted the privilege of driving on North Carolina's highways consented to the use of a breathalyzer test and had no constitutional right to consult a lawyer to void that consent; thus, so defendant had no right to consult counsel other than that provided for in G.S. 20-16.2(a)(6). State v. Rasmussen, 158 N.C. App. 544, 582 S.E.2d 44, 2003 N.C. App. LEXIS 1219 (2003), cert. denied, 357 N.C. 581, 589 S.E.2d 362 (2003).

When defendant was arrested for driving while impaired, his right to consult with counsel as specified in G.S. 20-16.2(a)(6) was not violated because he did not unambiguously identify the person who was present as his witness to the breathalyzer test as his attorney and did not affirmatively ask to speak to her before the test was administered. State v. Rasmussen, 158 N.C. App. 544, 582 S.E.2d 44, 2003 N.C. App. LEXIS 1219 (2003), cert. denied, 357 N.C. 581, 589 S.E.2d 362 (2003).

Officer was not required to wait for the full 30 minutes under G.S. 20-16.2(a)(6) before administering a breathalyzer test as a driver gave no clear indication that the driver wanted to call an attorney; the officer had reasonable grounds to believe that the driver had committed an implied consent offense based on the combination of the driver's evasion of a checkpoint, the odor of alcohol surrounding the driver, and a brief conversation with the driver. White v. Tippett, 187 N.C. App. 285, 652 S.E.2d 728, 2007 N.C. App. LEXIS 2359 (2007).

Time Limit on Right to Call Attorney and Select Witness. — The 30-minute time limit referred to by subdivision (a)(6) of this section applies both to the purpose of calling an attorney and to the purpose of selecting a witness to view the testing procedure. Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979).

The fact that as a matter of grace the legislature has given defendant the right to refuse to submit to chemical analysis, and suffer the consequences for refusing, does not convert this step in the investigation into a critical stage in the prosecution entitling defendant to more than the 30 minutes provided in the statute to secure a lawyer. Otherwise, defendant would be able to delay the analysis until its results would be of doubtful value. State v. Howren, 312 N.C.

454, 323 S.E.2d 335 (1984).

The 30-minute grace period is available only when a petitioner intends to exercise his rights to call an attorney or have a witness present under the statute. Rock v. Hiatt, 103 N.C. App. 578, 406 S.E.2d 638 (1991).

The 30-minute period from the advising of rights is a matter of legislative grace. In re Vallender, 81 N.C. App. 291, 344 S.E.2d 62 (1986).

The breathalyzer test will be delayed a maximum of 30 minutes from the time defendant is notified of his rights. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281 (1977).

The purpose of the 30-minute delay is to allow the defendant, who exercises his rights, a reasonable but limited amount of time to procure the presence of a lawyer, doctor, nurse or witness. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281 (1977).

The 1973 amendment of this section which inserted "for this purpose" in the place of "for these purposes" in subdivision (a)(6) did so at the same time that it enumerated three other rights accruing to a driver faced with the prospect of a breathalyzer test. The limiting words were inserted to apply to the single generic right enumerated in subdivision (a)(6) of this section, the right to have advice and support during the testing process, as opposed to the other rights enumerated in the proceeding subdivisions of this section. Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979).

Time Limit Is Constitutionally Sound. — Allowing the driver 30 minutes time to decide whether to submit to the test, while providing that he is deemed to have refused at the expiration of the 30 minutes, is a constitutionally sound principle. Etheridge v. Peters, 45 N.C. App. 358, 263 S.E.2d 308, aff'd, 301 N.C. 76, 269 S.E.2d 133 (1980).

No Constitutional Right to Confer with Counsel. — A person enjoys no constitutional right to confer with counsel before deciding whether to submit to the breathalyzer test. Etheridge v. Peters, 45 N.C. App. 358, 263 S.E.2d 308, aff'd, 301 N.C. 76, 269 S.E.2d 133 (1980).

The operator of a motor vehicle has no constitutional right to confer with counsel prior to a decision to submit to the breathalyzer test. Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979).

Section 15A-501(5) Not Applicable to Breathalyzer Tests. — Section 15A-501(5) which gives a criminal defendant a right to consult with counsel within a reasonable time after arrest, does not apply to breathalyzer tests. It would be incongruous to hold that subdivision (a)(6) of this section requires an accused to select a witness to view for him the testing procedure within 30 minutes but allows a greater period for the purpose of calling an attorney since, in virtually every situation, it would be easier for an accused to contact an attorney by telephone within 30 minutes than to contact anyone else and have them travel to the breathalyzer room to observe the test within that same time period. Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979).

The legislature did not intend for the "reasonable time" contemplated by G.S. 15A-501(5), a part of the Criminal Procedure Act, to apply to the specialized situation contemplated by this section, a civil matter involving the administrative removal of driving privileges as a result of refusing to submit to a breathalyzer test. When two statutes apparently overlap, it is well established that the statute special and particular shall control over the statute general in nature, even if the general statute is more recent, unless it clearly appears that the legislature intended the general statute to control. Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979).

Test Administered Whether or Not Requested Persons Have Arrived. — Even if the defendant does exercise his rights within 30 minutes of notification, the test can and will be administered after the lapse of 30 minutes regardless of whether the requested persons have arrived. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281 (1977).

Presence of Counsel During Entire Process Not Required. — An accused has no absolute right to demand that an attorney view the entire process involved in administering the test, including the preliminary steps necessary to ready the machine itself. State v. Martin, 46 N.C. App. 514, 265 S.E.2d 456, cert. denied, 301 N.C. 102, 273 S.E.2d 307 (1980).

The police are not required to delay testing unless the defendant exercises his rights. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281 (1977).

When Delay of Less Than 30 Minutes Permissible. — This section provides for a delay not in excess of 30 minutes for defendant to exercise his rights, and a delay of less than 30 minutes is permissible where the record is barren of any evidence to support a contention, if made, that a lawyer or witness would have arrived to witness the proceeding had the operator delayed the test to the maximum time of 30 minutes. State v. Buckner, 34 N.C. App. 447, 238 S.E.2d 635 (1977).

Subdivision (a)(6) of this section constitutes a maximum of 30 minutes delay for the defendant to obtain a lawyer or witness. It does not require that the administering officer wait 30 minutes before giving the test when the defendant has waived the right to have a lawyer or witness present or when it becomes obvious that defendant does not intend to exercise this right. State v. Buckner, 34 N.C. App. 447, 238 S.E.2d 635 (1977).

There was no error in the testing procedures or in the admission of the test results where there was a period of 25 minutes after notification to the defendant of his rights during which the defendant made no effort to exercise rights, and where, at the time the test was administered, the defendant made no effort to exercise his rights. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281 (1977).

Test Not Required to Be Administered within 30 Minutes. — This section does not require that the breathalyzer test be administered within 30 minutes of the time a person's rights are read to him. Pappas v. North Carolina Dep't of Motor Vehicles, 42 N.C. App. 497, 256 S.E.2d 829 (1979).

Request Made by Officer to Technician. — That portion of this section which provides that the test or tests shall be administered upon request of a law-enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor (now committed an implied-consent offense), refers to the request being made by the officer to the technician who will give the test, rather than being directed to the suspect. State v. Randolph, 273 N.C. 120, 159 S.E.2d 324 (1968), decided under this section as it stood before the 1969 amendment.

Person Tested Must Follow Directions of Breathalyzer Operator. — The full import of subsection (c) of this section requires an operator of a motor vehicle, who has been charged with the offense of driving under the influence of intoxicating liquor, to take a breathalyzer test, which means the person to be tested must follow the instructions of the breathalyzer operator. A failure to follow such instruction provides an adequate basis for the trial court to conclude that petitioner willfully refused to take a chemical test of breath in violation of law. Bell v. Powell, 41 N.C. App. 131, 254 S.E.2d 191 (1979).

Refusal to Remove Object from Mouth. — Where breathalyzer operator noticed a piece of paper in the corner of petitioner's mouth and ordered him to remove it, and where petitioner refused, petitioner's refusal to obey the breathalyzer operator's instructions was a refusal to take the breathalyzer test under subsection (c) of this section, since a reasonable method for determining that the subject has not "eaten" in 15 minutes is to prohibit him from placing foreign objects in his mouth. Tolbert v. Hiatt, 95 N.C. App. 380, 382 S.E.2d 453 (1989).

Defendant's Rights Not Denied by Officer's Statements. — Where defendant was fully and completely advised of his rights before a breathalyzer test was administered to him, the officer's error in stating that defendant could have a physician, registered nurse or a qualified technician or qualified person of his own choosing to administer the test under the direction of a law officer instead of stating that defendant could have a qualified person of his own choosing to administer a test or tests in addition to any administered at the direction of the law-enforcement officer did not deny defendant his rights. State v. Green, 27 N.C. App. 491, 219 S.E.2d 529 (1975).

Trial court's revocation was based on adequate findings of fact, as the court's finding that petitioner willfully refused without just cause or excuse to submit to a chemical analysis upon the request of the charging officer was the finding of an ultimate fact, indicating that the court rejected all opposing inferences raised by petitioner's evidence that the refusal was not willful or was excused, and as such, the court's finding permitted adequate appellate review of the ultimate fact at issue. Tolbert v. Hiatt, 95 N.C. App. 380, 382 S.E.2d 453 (1989).

Trial court erred in enjoining Commissioner of Motor Vehicles from revoking petitioner's license on the grounds that proper procedures were not followed in administering the breathalyzer test; the validity of testing procedures is not relevant where a motorist has refused to take the test. In re Rogers, 94 N.C. App. 505, 380 S.E.2d 599 (1989).

III. REVOCATION OF LICENSE FOR REFUSAL TO TAKE TEST.

Purpose. — The administrative punishment of license revocation is designed to promote breathalyzer examinations which provide the State law-enforcement officers with more accurate evidence of possible driving under the influence violations. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

Revocation of a driver's license does not deprive the licensee of any fundamental constitutional right. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

The evidence sought from a breathalyzer examination is directly related to the State's need to enforce the laws governing the operation of motor vehicles on the State's roads. The administrative penalty is appropriately designed to deny a right directly related to the laws whose enforcement may be hindered by refusal to take a breathalyzer examination. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

Finding that Driver's Refusal to Take Intoxilyzer Test Was Unrelated to Right to Have Witness Present. — Trial court properly determined that a driver refused to take an Intoxilyzer test for reasons unrelated to a violation of his right to have a witness present under G.S. 20-16.2. By concluding that the driver's refusal was willful, the trial court resolved any issue of whether the refusal was related to the State's violation of the driver's right to have a witness present during chemical analysis. Powers v. Tatum, — N.C. App. —, 676 S.E.2d 89, 2009 N.C. App. LEXIS 527 (2009).

A hearing under subsection (d) of this section satisfies the constitutional due process requirement. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

Subsection (d) of this section provides an adequate opportunity for a hearing prior to revocation of a license for failure to submit to a breathalyzer examination. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

Property Rights Not Denied. — Where plaintiff refused to submit to a breathalyzer examination and later received notice that his driver's license would be suspended, the plaintiff was not deprived of any property right without procedural due process. Although a notice of revocation was issued prior to a hearing the plaintiff was provided a right to a hearing, before revocation was effectuated. In fact the plaintiff requested and received an administrative hearing a trial de novo in superior court, and consideration of his appeals of the superior court's decision by both the North Carolina Court of Appeals and the North Carolina Supreme Court prior to actual revocation. Montgomery v. North Carolina DMV, 455 F. Supp. 338 (W.D.N.C. 1978), aff'd, 599 F.2d 1048 (4th Cir. 1979).

Suspensions for Refusal to Take Test and for Impaired Driving Distinguished. — The suspension of a license for refusal to submit to a chemical test at the time of an arrest for drunken (now impaired) driving and a suspension which results from a plea of guilty or a conviction of that charge are separate and distinct revocations. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971); Vuncannon v. Garrett, 17 N.C. App. 440, 194 S.E.2d 364 (1973); Creech v. Alexander, 32 N.C. App. 139, 231 S.E.2d 36, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

The suspension of a license which results from a plea of guilty or a conviction for drunken (now impaired) driving in no way exempts the licensee from the mandatory effects of the 60-day suspension of his license if he willfully refused to take a chemical test. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971); Creech v. Alexander, 32 N.C. App. 139, 231 S.E.2d 36, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

The Department (now Division) of Motor Vehicles had authority to suspend for 60 days the limited driving privilege granted a defendant convicted of drunken (now impaired) driving for defendant's willful refusal to take a breathalyzer test at the time of his arrest. Vuncannon v. Garrett, 17 N.C. App. 440, 194 S.E.2d 364 (1973).

Where the law directs suspension, revocation, or nonissuance of a driver's license, some of the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

Legality of Arrest. — Subsection (d) of this section makes no reference to any question concerning the legality of the arrest as coming within the scope of the inquiry. In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

The petitioner's driving privilege was properly revoked because of his unwillingness to take the breathalyzer test, whether or not his warrantless arrest was legal under G.S. 15A-401, where the arrest was constitutionally valid by virtue of the fact that the arresting officer had ample information to provide him with probable cause to arrest the petitioner for operating a motor vehicle upon a public highway while under the influence of intoxicants (now committing an implied-consent offense). In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979).

This section does not require that a suspected drunk driver submit to a chemical test. It does, however, provide that a suspect who "willfully refuses" a request to submit to the test will have his driving privileges automatically revoked for a period of six months. The standard of "willful refusal" in this context is clear. Once apprised of one's rights and having received a request to submit, a driver is allowed 30 minutes in which to make a decision. A "willful refusal" occurs whenever a driver (1) is aware that he has a choice to take or to refuse to take the test; (2) is aware of the time limit within which he must take the test; (3) voluntarily elects not to take the test; and (4) knowingly permits the prescribed 30 minute time limit to expire before he elects to take the test. Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984).

Burden of Proof. — Under this section, the respondent Commissioner of Motor Vehicles had the burden of proof to show that petitioner willfully refused to submit to a chemical analysis. Rock v. Hiatt, 103 N.C. App. 578, 406 S.E.2d 638 (1991).

The word "refuse" as used in this section means the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

A defendant's refusal to submit to an intoxilyzer test can give rise to proceedings to revoke his driver's license only if it is a willful refusal. State v. Summers, 132 N.C. App. 636, 513 S.E.2d 575, 1999 N.C. App. LEXIS 275 (1999), aff'd, 351 N.C. 620, 528 S.E.2d 17 (2000).

Driver's willful refusal to submit to a chemical analysis could be used to revoke his driver's license even though the arrest was not in compliance with G.S. 15A-401 (b)(2). Quick v. North Carolina DMV, 125 N.C. App. 123, 479 S.E.2d 226 (1997).

A willful refusal to submit to a chemical test within the meaning of this section occurs where a motorist: (1) is aware that he has a choice to take or to refuse to take the test; (2) is aware of the time limit within which he must take the test; (3) voluntarily elects not to take the test; and (4) knowingly permits the prescribed 30 minute time limit to expire before he elects to take the test. Etheridge v. Peters, 301 N.C. 76, 269 S.E.2d 133 (1980).

One may refuse the test under this section by inaction as well as by words. Refusal, in this context, is the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey. A finding that a driver did refuse to take the test is equivalent to a finding that the driver willfully refused to take the test. Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984).

Delay After Being Informed of Rights Held Refusal to Submit to Test. — Where the breathalyzer operator once fully informed petitioner of his rights with regard to the breath test, there was no obligation upon him to remind petitioner of the effect of his refusal to submit to the test, and petitioner's delay in taking the breathalyzer test, was at his own peril even though he stated that he was awaiting his attorney. Therefore, the trial court could properly find, that defendant had refused to submit to the breathalyzer test. Creech v. Alexander, 32 N.C. App. 139, 231 S.E.2d 36, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977); Seders v. Powell, 39 N.C. App. 491, 250 S.E.2d 690, aff'd, 298 N.C. 453, 259 S.E.2d 544 (1979).

Where plaintiff was requested to take the test pursuant to this section and acknowledged an understanding of his rights, and where plaintiff was told of the 30 minute time limit and was repeatedly asked if he would take the test before it expired, plaintiff's initial 20-minute silence in response to those requests does not toll the 30 minute period. Otherwise, any suspect could evade the possible repercussions of testing by simply refusing to cooperate. Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984).

The trial court did not err in finding that petitioner willfully refused to submit to a breath test by concluding that the 30 minute waiting period began to run at 1:39 a.m., when he was advised of his rights, instead of 1:54 a.m., when the formal request was made. In re Vallender, 81 N.C. App. 291, 344 S.E.2d 62 (1986).

Delay of More Than 30 Minutes While Awaiting Attorney. — Where petitioner's right to "call an attorney" was satisfied, petitioner had no right to delay the test in excess of 30 minutes while awaiting the arrival of his attorney. His declination to submit to the test was, therefore, a willful refusal under this section. Price v. North Carolina Dep't of Motor Vehicles, 36 N.C. App. 698, 245 S.E.2d 518, appeal dismissed, 295 N.C. 551, 248 S.E.2d 728 (1978), overruled on other grounds, Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979); Etheridge v. Peters, 45 N.C. App. 358, 263 S.E.2d 308, aff'd, 301 N.C. 76, 269 S.E.2d 133 (1980).

Plaintiff had no right to delay the test in excess of 30 minutes while waiting for his attorney to return his call. His declination to take the breathalyzer test was thus a willful refusal under this section. Seders v. Powell, 39 N.C. App. 491, 250 S.E.2d 690, aff'd, 298 N.C. 453, 259 S.E.2d 544 (1979).

Refusal to Provide More Than Two Samples. — Where petitioner provided two breath samples resulting in readings of .28 and .31 and then refused to provide any more samples, her conduct amounted to a willful refusal under subsection (c) of this section within the meaning of G.S. 20-139.1(b3). Watson v. Hiatt, 78 N.C. App. 609, 337 S.E.2d 871 (1985).

Failure to Follow Instructions As Willful Refusal. — Evidence showed that petitioner failed to follow the instructions of the breathalyzer operator where he repeatedly put his fingers in his mouth and failed to blow long enough into the machine to get a sufficient sample; failure to follow the instructions of the breathalyzer operator is an adequate basis for the trial court to conclude that petitioner willfully refused to submit to a chemical analysis. Tedder v. Hodges, 119 N.C. App. 169, 457 S.E.2d 881 (1995).

Right to Full De Novo Review. — Any person whose driver's license has been suspended under subsection (d) of this section has the right to a full de novo review by a superior court judge. This means the court must hear the matter on its merits from beginning to end as if no trial or hearing had been held by the Department (now Division) and without any presumption in favor of its decision. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Duty of Court to Determine "Willful Re-

fusal." — "Willful refusal" to take a breathalyzer test is a necessary requirement under this section and the trial court has the duty of judicially determining this question. Sermons v. Peters, 51 N.C. App. 147, 275 S.E.2d 218, cert. denied, 302 N.C. 630, 280 S.E.2d 441 (1981).

Failure of Court to Resolve Evidence of Willful Refusal. — Where evidence on whether petitioner knowingly permitted the prescribed 30-minute time period to expire before he took the test was conflicting, and the trial court made no attempt to resolve it in its order, trial court erred in determining that petitioner had "willfully refused" to submit to a chemical analysis under this section, and the case would be remanded to the trial court for additional findings based upon the evidence. Rock v. Hiatt, 103 N.C. App. 578, 406 S.E.2d 638 (1991).

Failure of Court to Find Facts. — Notwithstanding the failure of the trial court to find facts with regard to whether the plaintiff was arrested on reasonable grounds within the meaning of subsection (d) of this section, there was no need to remand for a further finding of facts or to award the plaintiff a new trial, since the facts leading up to the arrest were essentially uncontradicted, and only the conclusion to be drawn from them was disputed. Poag v. Powell, 39 N.C. App. 363, 250 S.E.2d 93, cert. denied, 296 N.C. 736, 254 S.E.2d 178 (1979).

Officer's Sworn Report Is Not Prima Facie Evidence of Refusal to Submit to Test. — This section does not make the law-enforcement officer's sworn report prima facie evidence that the arrested person willfully refused to submit to the breathalyzer test. Therefore, if he objects to its introduction, the report cannot be used as evidence against him. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

But Is Sufficient in Absence of Timely Objection. — In the absence of a timely objection as to its introduction, the officer's sworn report was sufficient evidence to sustain the Department's (now Division's) suspension of petitioner's license. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Trooper's failure to comply with subsection (a) in the face of petitioner's refusal to submit resulted in the rescission of the revocation of petitioner's license. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994).

Willfulness Found. — Although the evidence before a superior court was conflicting, the findings of fact 24 and 30 complied with G.S. 1A-1, N.C. R. Civ. P. 52(a) and were the ultimate findings of fact required to support a conclusion that a driver's refusal to submit to chemical analysis was willful as defined in G.S. 20-16.2. The officers asserted that the driver was marked as a refusal after refusing the test because he was innocent, and he testified that he refused the test because his right to have a witness present was violated; however, the driver conceded through finding of fact 30 that he did not know whether or not his witness was present, and therefore did not know that his rights had been violated. Powers v. Tatum, — N.C. App. —, 676 S.E.2d 89, 2009 N.C. App. LEXIS 527 (2009).

Compliance. — After being informed and kept apprised of his rights, a driver was given the option to take or refuse an Intoxilyzer test, and the purpose of G.S. 20-16.2 was thus fulfilled. The driver was informed of his statutory rights, given the opportunity to exercise those rights, kept informed of the thirty-minute time period as it elapsed, made aware of the choice he had to take or refuse the test, and provided multiple opportunities to submit to the test; the driver was not marked as a refusal until four minutes past the elapsed time limit. Powers v. Tatum, — N.C. App. —, 676 S.E.2d 89, 2009 N.C. App. LEXIS 527 (2009).

IV. EVIDENCE IN PROSECUTION FOR DRUNKEN DRIVING.

Chemical analyses of blood or breath are not within the protection of U.S. Const., Amend. V and XIV, or N.C. Const., Art. I, § 23, as such chemical analyses are not evidence which is "testimonial" or "communicative" in nature. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, 319 N.C. 227, 353 S.E.2d 404 (1987).

Results of Test Are Not Evidence within Privilege against Self-Incrimination. — The taking of a breath sample from an accused for the purpose of test is not evidence of a testimonial or communicative nature within the privilege against self-incrimination, and for that reason the requirements of Miranda are inapplicable to a breathalyzer test administered pursuant to the statutes. State v. Sykes, 285 N.C. 202, 203 S.E.2d 849 (1974).

Admissibility of Results When Test Not Properly Performed. — Testimony concerning the results of blood tests may be admitted into evidence even though the tests were not performed in accordance with this section and G.S. 20-139.1 under the "other competent evidence" exception contained in G.S. 20-139.1. State v. Byers, 105 N.C. App. 377, 413 S.E.2d 586 (1992).

Consideration of Alcosensor Results. — It is permissible to consider the results of alcosensor test in determining whether trooper had reasonable grounds to believe petitioner had committed an implied consent offense. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

The State is not limited to evidence of blood alcohol concentration which was procured in accordance with the proce-

dures of this statute; testing pursuant to a search warrant is a type of "other competent evidence" referred to in G.S. 20-139.1. State v. Davis, 142 N.C. App. 81, 542 S.E.2d 236, 2001 N.C. App. LEXIS 45 (2001), cert. denied, 353 N.C. 386, 547 S.E.2d 818 (2001).

Effect of Failure to Advise Defendant of Right to Refuse Test. — Under this section, failure to advise a defendant of his right to refuse the breathalyzer test does not render the results of the test inadmissible in court. State v. Allen, 14 N.C. App. 485, 188 S.E.2d 568 (1972).

Failure by officers to advise defendant of his right to refuse to take a breathalyzer test does not render the result of the test inadmissible in evidence, defendant having impliedly consented to the test by virtue of driving an automobile on the public highways of the State, and the test having been administered after arrest and without the use of force or violence. State v. McCabe, 1 N.C. App. 237, 161 S.E.2d 42 (1968).

Where the defendant by his voluntary and overt actions makes it clear that he will not voluntarily submit to the breathalyzer test, it is not necessary for the State to present evidence that the defendant was advised of his right to refuse to take the breathalyzer test before evidence of that refusal may be used against him at a trial for driving under the influence, as is allowed pursuant to G.S. 20-139.1. State v. Simmons, 51 N.C. App. 440, 276 S.E.2d 765 (1981).

Failure to Advise Defendant of Right to Attorney and Witness. — Where the State offered no evidence upon the question of whether defendant had been notified of his right to call an attorney and to select a witness to view breathalyzer testing procedures in accordance with subsection (a) of this section, results of the test were inadmissible, and admission of the results over defendant's objection constituted prejudicial error. State v. Shadding, 17 N.C. App. 279, 194 S.E.2d 55, cert. denied, 283 N.C. 108, 194 S.E.2d 636 (1973).

Refusal of Test Admissible. — The failure to warn the defendant that the officer could seek alternate methods of testing did not render defendant's refusal inadmissible. State v. Davis, 142 N.C. App. 81, 542 S.E.2d 236, 2001 N.C. App. LEXIS 45 (2001), cert. denied, 353 N.C. 386, 547 S.E.2d 818 (2001).

Failure to Advise Defendant of Right to Additional Test. — The failure of the State to establish that defendant was accorded the statutory right to have another test, in addition to the others which he was properly accorded, renders the results of the breathalyzer test inadmissible in evidence. State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

Where the defendant is not advised of his rights under subsection (a), including, under subdivision (a)(5), the right to have another alcohol concentration test performed by a qualified person of his own choosing, the State's test is inadmissible in evidence. State v. Gilbert, 85 N.C. App. 594, 355 S.E.2d 261 (1987).

Results of the breathalyzer test were admissible even though defendant's initial "commitment" to take the test was obtained before he was advised of his statutory rights embodied in subsection (a) of this section. State v. Sykes, 285 N.C. 202, 203 S.E.2d 849 (1974).

Refusal of Test May Not Be Used as Assumption of Guilt. — This section does not say that if a person refuses to submit to the test, it will be used as an assumption of guilt in court. State v. Mobley, 273 N.C. 471, 160 S.E.2d 334 (1968), decided prior to the 1969 amendment.

Testimony of Charging Officer. — It is settled law that the arresting (now charging) officer may testify as to a refusal to take the breathalyzer test at a trial for driving under the influence. State v. Simmons, 51 N.C. App. 440, 276 S.E.2d 765 (1981).

Defendant's Incriminating Statements Deemed Harmless Error. — Admission of evidence that after defendant blew into breathalyzer and was shown the reading, he made statements indicating his disbelief at the result, thus allegedly creating an inference that he had registered a reading in excess of the legal limit on the first test, was harmless in light of other evidence of defendant's guilt, including his refusal to take a second test. State v. Wike, 85 N.C. App. 516, 355 S.E.2d 221 (1987).

Other Officer Not Required to Advise Defendant. — Subsection (a) does not require an officer, other than the charging officer, to advise defendants of their statutory rights in order for the state to admit into evidence, at the criminal prosecution for driving while impaired, the results of, or refusal to submit to, chemical analysis. State v. Abdereazeq, 122 N.C. App. 727, 471 S.E.2d 445 (1996).

Adequate Advice Given. — Evidence, including state trooper's testimony and defendant's telephone call subsequent to refusal to sign written form, supported trial court's finding that defendant had been adequately advised of his chemical test rights as required by this section. Gibson v. Faulkner, 132 N.C. App. 728, 515 S.E.2d 452 (1999), decided prior to the 2000 amendment.

Reasonable Grounds Shown. — The evidence surrounding petitioner's accident, including the reason for its occurrence, taken with the odor of alcohol about petitioner, her mumbled speech, her admission that she had been drinking liquor earlier, and the results of the alcosensor test were clearly sufficient to give trooper reasonable grounds to believe that petitioner had been driving while impaired.

Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

OPINIONS OF ATTORNEY GENERAL

Department (now Division) of Motor Vehicles May Revoke Limited Driving Privilege Granted by a Court. — See opinion of Attorney General to Mr. Joe W. Garrett, Commissioner, N.C. Department of Motor Vehicles, 40 N.C.A.G. 414 (1970).

Revocation for Refusal to Submit to Test Is Contingent upon First Having Been Charged for Impaired Driving. — See opinion of Attorney General to Lt. M. S. Niven, 43 N.C.A.G. 81 (1973).

Person authorized to administer a chemical test is a breathalyzer operator who holds a permit issued by the Commission for Health Services (now Department of Human Resources) pursuant to G.S. 20-139.1(b). See Opinion of Attorney General to Dr. Arthur J. McBay, Office, Chief Medical Examiner, 42 N.C.A.G. 326 (1973).

Advising Accused of Rights. — See opinion of Attorney General to Robert Powell, 41 N.C.A.G. 326 (1971).

Running of 30 Minutes Prior to Testing Defendant. — See opinion of Attorney General to LTC Charles B. Pierce, N.C. State Highway Patrol, 41 N.C.A.G. 242 (1971).

Suspect Not Entitled to Drive Own Car to Test Site. — A person who requests a prearrest chemical test pursuant to G.S. 20-16.2(i) does not have to be permitted to drive his own vehicle to the test site. See Opinion of Attorney General to Chief P.L. McIver, Garner Police Department, Garner, N.C., 47 N.C.A.G. 89 (1977).

Service of Pick-Up Notice. — If a subject upon whom a law-enforcement officer is serving a notice to pick up a driver's license revoked under G.S. 20-16.2(c) states that he has requested a hearing pursuant to G.S. 20-16.2(d), the officer should not serve the pick-up notice until he has verification from the Department of Motor Vehicles that no valid request for hearing has been made. See opinion of Attorney General to Major John Laws, N.C. State Highway Patrol, 40 N.C.A.G. 403 (1969).

§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Department of Health and Human Services; use of test results or refusal.

(a) When Alcohol Screening Test May Be Required; Not an Arrest. — A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:
  a. Committed a moving traffic violation; or
  b. Been involved in an accident or collision; or
(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. — The Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. — No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the Department and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. — The fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for believing:

(1) That the driver has committed an implied-consent offense under G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. (1973, c. 312, s. 1; c. 476, s. 128; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 12; 2006-253, s. 7.)

CASE NOTES

Consideration of Alcosensor Results. — It is permissible to consider the results of alcosensor test in determining whether trooper had reasonable grounds to believe petitioner had committed an implied consent offense. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

Admission Into Evidence. — Results of defendant's alcohol screening test were not admissible as substantive evidence of alcohol use in a prosecution for driving while his license was revoked, and could be admitted only as evidence in support of probable cause for the arrest or to show impairment by a substance other than alcohol. State v. Bartlett, 130 N.C. App. 79, 502 S.E.2d 53 (1998).

Alco-sensor test results were not admissible in the event of a rehearing on defendant's contempt charge under G.S. 5A-11 because the results were used to show that defendant was impaired and that alcohol was the cause of the impairment, and thus the results were inadmissible under G.S. 20-16.3(d). State v. Ford, 164 N.C. App. 566, 596 S.E.2d 846, 2004 N.C. App. LEXIS 1034 (2004).

Sobriety Checkpoint. — Order suppressing evidence obtained by roadway checkpoint was error because no evidence suggested that the stated proper purpose of checkpoint (sobriety) was a mask for another, unconstitutional purpose, and as such the trial court was in error in holding that the lack of such evidence required it to exclude the evidence obtained by the stop; from the available evidence, it was clear that the actual purpose of the checkpoint was the same as its stated purpose: to check for sobriety. State v. Burroughs, 185 N.C. App. 496, 648 S.E.2d 561, 2007 N.C. App. LEXIS 1811 (2007).

Cited in State v. Hunter, 299 N.C. 29, 261 S.E.2d 189 (1980); Powers v. Powers, 130 N.C. App. 37, 502 S.E.2d 398 (1998); State v. Mitchell, 154 N.C. App. 186, 571 S.E.2d 640, 2002 N.C. App. LEXIS 1414 (2002).

§ 20-16.3A. Checking stations and roadblocks.

(a) A law-enforcement agency may conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

(1) Repealed by Session Laws 2006-253, s. 4, effective December 1, 2006, and applicable to offenses committed on or after that date.

(2) Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped to produce drivers license, registration, or insurance information.

(2a) Operate under a written policy that provides guidelines for the pattern, which need not be in writing. The policy may be either the agency's own policy, or if the agency does not have a written policy, it may be the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to produce drivers license, registration, or insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.

(3) Advise the public that an authorized checking station is being operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random or statistically indicated, and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be grounds for a motion to suppress or a defense to any offense arising out of the operation of a checking station. (1983, c. 435, s. 22; 2006-253, s. 4.)

Legal Periodicals. — For comment, "DWI Roadblocks: Are They Constitutional in North Carolina?," see 21 Wake Forest L. Rev. 779 (1986).

CASE NOTES

Legislative Intent. — Language of G.S. 20-16.3A made clear that the legislature did not intend for it to cover all license checks. State v. Tarlton, 146 N.C. App. 417, 553 S.E.2d 50, 2001 N.C. App. LEXIS 941 (2001).

Checking Station in Accord with Guidelines. — Where the findings showed that checking station was conducted in accordance with required guidelines, motion to suppress was not proper. State v. Barnes, 123 N.C. App. 144, 472 S.E.2d 784 (1996).

Sobriety checkpoint complied with G.S. 20-16.3A because it provided for preliminary screening of every driver and allowed further investigation only if the officer had a reasonable articulable suspicion that the driver was impaired. State v. Colbert, 146 N.C. App. 506, 553 S.E.2d 221, 2001 N.C. App. LEXIS 972 (2001).

Permissibility of Monitoring Checkpoint Avoidance. — It is reasonable and permissible for an officer to monitor a checkpoint's entrance for vehicles whose drivers may be attempting to avoid the checkpoint. An officer, in conjunction with the totality of the circumstances or the checkpoint plan, may, also, pursue and stop a vehicle which has turned away from a checkpoint within its perimeters for reasonable inquiry to determine why the vehicle turned away. North Carolina's interest in combating intoxicated drivers outweighs the minimal intrusion that an investigatory stop may impose upon a motorist under these circumstances. State v. Foreman, 351 N.C. 627, 527 S.E.2d 921, 2000 N.C. LEXIS 349 (2000).

Police officers were not required to follow the requirements of this section where the stop which resulted in defendant/drunk driver's arrest did not arise pursuant to an impaired driving check but arose as the result of a false report of breaking and entering. State v. Covington, 138 N.C. App. 688, 532 S.E.2d 221, 2000 N.C. App. LEXIS 775 (2000).

Cited in State v. Bowden, 177 N.C. App. 718, 630 S.E.2d 208, 2006 N.C. App. LEXIS 1218 (2006).

§ 20-16.4: Repealed by Session Laws 1989, c. 691, s. 4.

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) Definitions. — As used in this section the following words and phrases have the following meanings:

(1) Law Enforcement Officer. — As described in G.S. 20-16.2(a1).

(2) Clerk. — As defined in G.S. 15A-101(2).

(3) Judicial Official. — As defined in G.S. 15A-101(5).

(4) Revocation Report. — A sworn statement by a law enforcement officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met, and whether the person has a pending offense for which the person's license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. — The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. — A person's driver's license is subject to revocation under this section if:

(1) A law enforcement officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

(b1) Precharge Test Results as Basis for Revocation. — Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving;

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; or

c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and

(3) The person is charged with an implied-consent offense.

(c) Duty of Law Enforcement Officers and Chemical Analysts to Report to Judicial Officials. — If a person's driver's license is subject to revocation under this section, the law enforcement officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the law enforcement officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. — The judicial official with whom the revocation report must be filed is:

(1) The judicial official conducting the initial appearance on the underlying criminal charge if:
  a. No revocation report has previously been filed; and
  b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.

(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present, if no report has previously been filed.

(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) and (2) are not applicable at the time the law enforcement officer must file the report.

(e) Procedure if Report Filed with Judicial Official When Person Is Present. — If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the law enforcement officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. — When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. For purposes of this subsection, a properly executed report under subdivision (d)(3) may include a sworn statement by the law enforcement officer along with an affidavit received directly by the Clerk from the chemical analyst. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:
  a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or
  b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or
  c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or
  d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order shall deposit it with the clerk within three days of the surrender.

(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. — A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district court judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

(h) Return of License. — After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

(i) Effect of Revocations. — A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p).

(j) Costs. — Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of one hundred dollars ($100.00) as costs for the action before the person's license may be returned under subsection (h) of this section. Fifty percent (50%) of the costs collected under this section shall be credited to the General Fund. Twenty-five percent (25%) of the costs collected under this section shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Health and Human Services. The remaining twenty-five percent (25%) of the costs collected under this section shall be remitted to the county for the sole purpose of reimbursing the county for jail expenses incurred due to enforcement of the impaired driving laws.

(k) Report to Division. — Except as provided below, the clerk shall mail a report to the Division:

(1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and

(2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report shall identify the person whose license has been revoked, specify the date on which his license was revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 30-day period had elapsed.

(*l*) Restoration Fee for Unlicensed Persons. — If a person whose license is revoked under this section has no valid license, he must pay the restoration fee required by G.S. 20-7 before he may apply for a license from the Division.

(m) Modification of Revocation Order. — Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

(n) Exception for Revoked Licenses. — Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;

(2) Has no limited driving privilege; and

(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section,

the judicial official need not issue a revocation order under this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. — Proceedings under this section are civil actions, and must be identified by the caption "In the Matter of ______" and filed as directed by the Administrative Office of the Courts.

(p) Limited Driving Privilege. — A person whose drivers license has been revoked for a specified period of 30 or 45 days under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

A person whose license has been indefinitely revoked under this section may, after completion of 30 days under subsection (e) or the applicable period of time under subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite revocation, a judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid. (1983, c. 435, s. 14; 1983 (Reg. Sess., 1984), c. 1101, ss. 11-17; 1985, c. 690, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 80, c. 1112; 1989, c. 771, ss. 15, 16, 18; 1991, c. 689, s. 233.1(a); 1993, c. 285, ss. 5, 6; 1997-379, ss. 3.4-3.8; 1997-443, s. 11A.9; 1997-486, ss. 2-6; 1998-182, ss. 29, 30; 1999-406, s. 13; 2000-140, s. 103A; 2000-155, s. 15; 2001-487, ss. 6, 7; 2003-104, s. 1; 2007-323, s. 30.10(e); 2007-493, s. 17.)

Editor's Note. — Session Laws 1999-237, s. 11.62(a) provides that the Administrative Office of the Courts shall transfer all funds collected under G.S. 20-16.5(j) that are designated for the chemical alcohol testing program to the Department of Health and Human Services on a monthly basis.

Session Laws 1999-237, s. 11.62(b) provides that any funds collected under G.S. 20-16.5(j) that are designated for the chemical alcohol testing program of the Department of Health and Human Services and are not needed for that program shall be transferred annually to the Governor's Highway Safety program for grants to local law enforcement agencies for training and enforcement of the laws on driving while impaired. Transferred funds shall be spent within 13 months of receipt of the funds and amounts received by the Governor's Highway Safety Program shall not revert until the June 30 following the 13-month period.

For an earlier provision on funds collected under subsection (j), see Session Laws 1995-324, s. 26.5.

Session Laws 1999-406, s. 18, states that the act does not obligate the General Assembly to appropriate additional funds, and that the act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Session Laws 2007-323, s. 30.10(h), as amended by Session Laws 2008-193, s. 2, provides: "The remainder of this section becomes effective August 1, 2007, and applies to all costs assessed or collected on or after that date."

Effect of Amendments. — Session Laws 2007-493, s. 17, effective August 30, 2007, substituted "law enforcement officer" for "charging officer" throughout the section. For applicability provision, see Editor's note.

Legal Periodicals. — For note, "North Carolina and Pretrial Civil Revocation of an Impaired Driver's License and the Double Jeopardy Clause," see 18 Campbell L. Rev. 391 (1996).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2315 (1997).

For 1997 legislative survey, see 20 Campbell L. Rev. 417.

CASE NOTES

Editor's Note. *— Most of the cases decided below were decided under this section as it read prior to the 1993 amendment which reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

Constitutionality. — The summary 10-day revocation required by this section does not violate the equal protection rights guaranteed by the State and federal Constitutions. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

The Safe Roads Act's prehearing suspension provisions do not deprive persons whose licenses have been suspended for a 10-day period following their failure of a breath analysis test of property without due process of law. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

Because the summary 10-day license revocation under this section upon a person's failure to pass a breath analysis test is a remedial measure reasonably related to the State's interest in highway safety, the law of the land is satisfied by judicial review of the State's action to determine if there is probable cause to believe the conditions justifying revocation exist. The Safe Roads Act provides for such review, as under subsection (e) of this section, before revocation can take place, a detached and impartial judicial officer must scrutinize every condition of revocation to determine if each condition probably has been met. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

The ten-day driver's license revocation under this section did not constitute punishment as such, and therefore, defendant's subsequent criminal conviction for DWI did not violate the Double Jeopardy Clause. State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996).

Revocation of one's driver's license under this section and subsequent convictions of DWI under G.S. 20-138.1 do not violate the prohibition against double jeopardy. State v. Rogers, 124 N.C. App. 364, 477 S.E.2d 221 (1996).

Impact of Double Jeopardy Clause. — The plaintiff failed to prove that North Carolina's prior imposition of a thirty-day period of administrative license revocation under G.S. 20-16.5 constituted a criminal punishment within the meaning of the Double Jeopardy Clause of the Fifth Amendment, U.S. Const. Amend. V, and barred plaintiff's prosecution for the offense of driving while impaired in violation of G.S. 20-138.1. Brewer v. Kimel, 256 F.3d 222, 2001 U.S. App. LEXIS 15693 (4th Cir. 2001).

Because a 30-day license revocation is a civil sanction rather than a criminal penalty, the Double Jeopardy Clause does not bar a defendant's subsequent criminal prosecution for driving while impaired by alcohol. State v. Evans, 145 N.C. App. 324, 550 S.E.2d 853, 2001 N.C. App. LEXIS 639 (2001).

Revocation of defendant's driver's license did not constitute jeopardy for double jeopardy purposes because it was not a punishment. State v. Streckfuss, 171 N.C. App. 81, 614 S.E.2d 323, 2005 N.C. App. LEXIS 1190 (2005).

This section does not require a finding of scienter. Brewer v. Kimel, 256 F.3d 222, 2001 U.S. App. LEXIS 15693 (4th Cir. 2001).

The summary 10-day revocation procedure of this section is not a punishment, but a highway safety measure. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

Duration of 10-Day Revocation. — Under subsection (e) of this section, the summary 10-day revocation continues until the person has paid the applicable costs and at least 10 days have elapsed from the date the revocation order is issued. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986), rejecting the contention that revocation continues until 10 days from the date the revocation order is issued and the date the person has paid the applicable costs, whichever occurs last.

The thirty-day administrative license revocation provision rationally serves le-

gitimate remedial goals and is not excessive in relation to these goals. Brewer v. Kimel, 256 F.3d 222, 2001 U.S. App. LEXIS 15693 (4th Cir. 2001).

Revocation Proper. — Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver's license for 10 days, petitioner's license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

Standing to Challenge Section. — The mere fact that plaintiff suffered the adverse effects of this section in October, 1983, did not give him standing to challenge the statute in federal court after his license had been returned to him. Crow v. North Carolina, 642 F. Supp. 953 (W.D.N.C. 1986).

Appellate Review Declined Due to Failure to Contest Revocation Appropriately. — Appellate court declined to address defendant's argument that the revocation report was not properly executed and was not "expeditiously filed" with the court because defendant failed to contest the validity of the revocation through the means prescribed in G.S. 20-16.5. State v. Hinchman, — N.C. App. —, 666 S.E.2d 199, 2008 N.C. App. LEXIS 1667 (2008).

Applied in State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984); State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

OPINIONS OF ATTORNEY GENERAL

Expunction of Criminal Records. — Section 15A-146, which prescribes procedures for expunction of criminal records, does not apply to records of civil drivers license revocations maintained by the Division of Motor Vehicles and, therefore, does not require the Division of Motor Vehicles to expunge records of a 30-day drivers license revocation under G.S. 20-16.5 based on the same operation of a vehicle that gave rise to a criminal charge against the driver which is subsequently dismissed. See opinion of Attorney General to Mr. Mike Bryant, Director, Driver License Section, N.C. Division of Motor Vehicles, 2001 N.C. AG LEXIS 22 (6/13/2001).

§ 20-17. Mandatory revocation of license by Division.

(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:
  a. Impaired driving under G.S. 20-138.1.
  b. Impaired driving under G.S. 20-138.2, if the driver's alcohol concentration level was .06 or higher. For the purposes of this sub-subdivision, the driver's alcohol concentration level result, obtained by chemical analysis, shall be conclusive and is not subject to modification by any party, with or without approval by the court.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction, within a period of 12 months, of (i) two charges of reckless driving, (ii) two charges of aggressive driving, or (iii) one or more charges of reckless driving and one or more charges of aggressive driving.

(7) Conviction upon one charge of aggressive driving or reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a

false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Any offense set forth under G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7.

(13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B.

(15) A conviction of malicious use of an explosive or incendiary device to damage property (G.S. 14-49(b) and (b1)); making a false report concerning a destructive device in a public building (G.S. 14-69.1(c)); perpetrating a hoax concerning a destructive device in a public building (G.S. 14-69.2(c)); possessing or carrying a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property (G.S. 14-269.2(b1)); or causing, encouraging, or aiding a minor to possess or carry a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property (G.S. 14-269.2(c1)).

(16) A second or subsequent conviction of larceny of motor fuel under G.S. 14-72.5. A conviction for violating G.S. 14-72.5 is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under G.S. 14-72.5 that occurred in the seven years immediately preceding the date of the current offense.

(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall:

(1) Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12; or

(2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831; 1979, c. 667, ss. 20, 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 15; 1989, c. 771, s. 11; 1991, c. 726, s. 7; 1993 (Reg. Sess., 1994), c. 761, s. 1; 1995, c. 506, s. 7; c. 538, s. 2(b); 1997-234, s. 3; 1997-443, s. 19.26(b); 1998-182, s. 18; 1999-257, s. 4.1; 2001-352, s. 3; 2001-487, s. 52; 2004-193, ss. 4, 5; 2006-253, s. 22.2; 2007-493, s. 2.)

Cross References. — As to power to suspend or revoke license generally, see G.S. 20-16 and note. As to period of suspension or revocation, see G.S. 20-19.

Editor's Note. — The subsection (b) designation was assigned by the Revisor of Statutes, the designation in Session Laws 1995, c. 538, s. 2(b) having been subdivision (12); the subsection (a) designation was added as well.

Effect of Amendments. — Session Laws 2007-493, s. 2, effective August 30, 2007, substituted "Any offense set forth under G.S. 20-

141.4." for "Death by vehicle as defined in G.S. 20-141.4." in subdivision (a)(9).

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 417.

For survey on new penalties for criminal behavior in schools, see 22 Campbell L. Rev. 253 (2000).

CASE NOTES

Editor's Note. *— Most of the cases below were decided prior to the 1993 (Reg. Sess., 1994) amendment which lowered the alcohol concentration from 0.10 to 0.08.*

I. In General.
II. Impaired Driving.
III. Reckless Driving.

I. IN GENERAL.

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

Revocation of License Not Part of Court's Punishment. — The revocation of a license to operate a motor vehicle is not a part of, nor within the limits of, punishment to be fixed by the court wherein the offender is tried. When the conviction has become final, the revocation of the license by the Department (now Division) of Motor Vehicles is a measure flowing from the police power of the State designed to protect users of the State's highways. Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

Ministerial Duty. — Mandatory revocation of an operator's license under this section is the performance of a ministerial duty. Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954).

The record of a conviction which has become final suffices to invoke the ministerial duty of performing the mandatory requirement of the statute by the Department (now Division) of Motor Vehicles. Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

The revocation of a license by the Division of Motor Vehicles is nothing more than the performance of a ministerial duty by that administrative agency, and is in no sense a "judgment" that can preclude the superior court from acting on a petition filed in that court pursuant to the habitual offenders provisions of the General Statutes. In re Woods, 33 N.C. App. 86, 234 S.E.2d 45 (1977).

No action or order of the court is required to put the revocation of the license into effect. Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956); Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

"Forthwith" does not mean the absolute exclusion of any interval of time, but means only that no unreasonable length of time shall intervene before performance. State v. Ball, 255 N.C. 351, 121 S.E.2d 604 (1961).

This section does not require the Commissioner (now Division) to act instantaneously. State v. Ball, 255 N.C. 351, 121 S.E.2d 604 (1961).

The word "forthwith" in this section does not require instantaneous action but only action within a reasonable length of time. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972); State v. Ward, 31 N.C. App. 104, 228 S.E.2d 490 (1976).

And Action by Division within 11 Days of Notice Reasonably Complied with Section. — Where the Department (now Division) of Motor Vehicles acted within 11 days after it received notice of plaintiff's second conviction for reckless driving, this was reasonable compliance with this section. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Injunction Not Available to Plaintiff Who Could Have Prevented Delay in Start of Revocation Period. — Where the elapse of approximately 15 months between plaintiff's last conviction for reckless driving and the order of revocation was not caused by defendant, Commissioner of Motor Vehicles or his Department (now Division), but the delay apparently resulted from the failure of the clerk of the court where plaintiff was last convicted to act promptly in forwarding a record of the conviction to the Department (now Division) of Motor Vehicles, and plaintiff could have prevented any delay in the start of the revocation period by surrendering his license to the clerk and obtaining a receipt therefor at the time of his second conviction, plaintiff was not entitled to injunctive relief. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Applies Only to Conviction in North Carolina Court. — The mandatory provision of this section applies only to a conviction in a North Carolina court. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

This section does not specifically require notice, and revocation under this statute is not reviewable in court. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

The surrendering of his license, and the forwarding of it to the Department (now Division) by the court, gives the licensee sufficient notice that his operator's license has been revoked. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

Notice and Record Showing Revocation under Section. — An official notice and record of "revocation of license" for the specified reason of "conviction of involuntary manslaughter" mailed to a driver by the Department (now Division) of Motor Vehicles was held to show that the license was revoked under this section rather than suspended under G.S. 20-16, and did not support a finding by the trial court that the license was suspended under the latter statute. Mintz v. Scheidt, 241 N.C. 268, 84 S.E.2d 882 (1954).

Division Not Estopped to Assert That It Acted under Section. — Where the Department (now Division) of Motor Vehicles revokes a driver's license under the mandatory provisions of this section, the Department (now Division) will not be stopped from asserting that it was acting under the provisions of this section by reason of a letter subsequently written to the licensee granting him a hearing under G.S. 20-16(c) [now subsection (d)], since in such instance a hearing is authorized by law. Mintz v. Scheidt, 241 N.C. 268, 84 S.E.2d 882 (1954).

Failure to Notify DMV of Change of Address. — Where there was no court record indicating defendant's plea, nor the court's allocution to her, with respect to her guilty plea to a charge of failing to notify the Department of Motor Vehicles of a change of address pursuant to G.S. 20-17, such was more than a technical non-compliance with the reporting requirements of G.S. 15A-1022 and G.S. 15A-1026, but instead was sufficient to establish prejudice requiring that the conviction thereunder be vacated and the matter remanded. State v. Glover, 156 N.C. App. 139, 575 S.E.2d 835, 2003 N.C. App. LEXIS 78 (2003).

Plea of Nolo Contendere. — This section mandatorily required the Department (now Division) of Motor Vehicles to revoke the petitioner's license upon receipt of the record from the superior court of his plea of nolo contendere, which in that case for the purposes of that case was equivalent to a conviction on the charge of driving a motor vehicle while under the influence of intoxicating liquor upon the public highways (now impaired driving). Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954).

As a basis for suspension or revocation of an operator's license, a plea of nolo contendere has the same effect as a conviction or plea of guilty of such offense. Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

A plea of nolo contendere to a charge of manslaughter resulting from the operation of an automobile supports the revocation of the driver's license under the mandatory provisions of this section. Mintz v. Scheidt, 241 N.C. 268, 84 S.E.2d 882 (1954).

No Contest Plea May Be Used as Prior Conviction. — The judgment entered on a plea of no contest to a previous charge of driving with a blood alcohol content of .10 percent or more may be used as a prior conviction by the DMV for purposes of revoking a driver's license. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Certiorari to Review Mandatory Suspension. — Petitioner whose driving privilege was mandatorily suspended under subdivision (2) of this section (now subdivision (a)(2)) and G.S. 20-19(e) did not have the right to appeal under G.S. 20-25 or under the Administrative Procedure Act, Chapter 150B. However, the Superior Court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Where petitioner, seeking conditional restoration of his driving privileges, pled sufficient facts to show he did not have right to appeal from final decision of DMV, he could then have petitioned for writ of certiorari to have case reviewed by superior court. Thus, superior court had jurisdiction to review case. Penuel v. Hiatt, 100 N.C. App. 268, 396 S.E.2d 85 (1990).

Review of Revocation. — Mandatory revocations under this section are not reviewable under G.S. 20-25. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948); Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

There is no right of judicial review when the revocation is mandatory pursuant to the provisions of this section. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969); Rhyne v. Garrett, 18 N.C. App. 565, 197 S.E.2d 235 (1973).

The mandatory provision of this section is not subject to judicial review. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

Review of Refusal to Reinstate License. — Once the right to drive has been mandatorily revoked and a petitioner unsuccessfully seeks to have the license reinstated by the DMV, no superior court review of the denial is mandated unless the denial was arbitrary or illegal, because reinstatement is not a legal right but is an act of grace. Alpiser v. Eagle Pontiac-GMC-Isuzu, Inc., 97 N.C. App. 610, 389 S.E.2d 293 (1990).

Court Order Requiring Conditional Res-

toration Held Error. — Where petitioner offered no support for his allegation that the DMV's denial of a conditional restoration of his license, which had been mandatorily revoked under this section, was an arbitrary and capricious act and was in disregard of the law set forth in G.S. 20-19, it was error for the superior court to enter an order requiring the DMV to conditionally restore petitioner's driving privileges. Penuel v. Hiatt, 97 N.C. App. 616, 389 S.E.2d 289 (1990).

Applied in Whedbee v. Powell, 41 N.C. App. 250, 254 S.E.2d 645 (1979); State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985); State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985); State v. Bowes, 159 N.C. App. 18, 583 S.E.2d 294, 2003 N.C. App. LEXIS 1439 (2003).

Cited in Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986); Cole v. Faulkner, 155 N.C. App. 592, 573 S.E.2d 614, 2002 N.C. App. LEXIS 1589 (2002).

II. IMPAIRED DRIVING.

Revocation of a driver's license is mandatory whenever it is made to appear that the licensee has been found guilty of driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug (now impaired driving). Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969); In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

Under G.S. 20-17(a)(2), defendant's driver's license was subject to mandatory revocation for one year because she was convicted under G.S. 20-138.1 for driving with an alcohol concentration of 0.16. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

Period of Revocation. — Where there is mandatory revocation under subdivision (2) of this section (now subdivision (a)(2)), the period of revocation shall be as provided in G.S. 20-19. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959); In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

Evidence that defendant had been convicted of operating an automobile while under the influence of intoxicants (now impaired driving) was competent on the question as to whether a driver's license issued to defendant had been legally revoked. State v. Stewart, 224 N.C. 528, 31 S.E.2d 534 (1944).

Failure to Appear for Trial for Driving Under the Influence in Another State. — Motorist who received citation for driving under the influence in South Carolina and then forfeited bond by not appearing in court had his driver's license properly revoked even though no warrant was issued. Sykes v. Hiatt, 98 N.C. App. 688, 391 S.E.2d 834 (1990).

III. RECKLESS DRIVING.

Provisions mandatory. — now subdivision (a)(6)) Snyder v. Scheidt, 246 N.C. 81, 97 S.E.2d 461 (1957).

The provisions of subdivision (6) of this section (now subdivision (a)(6)) and G.S. 20-19(f) are mandatory and not discretionary. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Section 20-16(a)(9) Did Not Repeal Subdivision (6) now subdivision (a)(6)) of This Section by Implication. — Subdivision (6) (now subdivision (a)(6)) of this section authorizing the mandatory revocation of a driver's license upon two convictions of reckless driving within a 12-month period was not repealed by implication by the subsequent enactment of G.S. 20-16(a)(9) authorizing the discretionary suspension of a driver's license upon one or more convictions of reckless driving and one or more convictions of speeding in excess of 44 (now 55) mph and not more than 75 (now 80) mph within a 12-month period. Person v. Garrett, 280 N.C. 163, 184 S.E.2d 873 (1971).

The word "conviction," as used in subdivision (6) (now subdivision (a)(6)), refers to a final conviction by a court of competent jurisdiction. Snyder v. Scheidt, 246 N.C. 81, 97 S.E.2d 461 (1957).

Date of Offense, Not Date of Conviction, Controls. — Subdivision (6) of this section directs the revocation of a driver's license for one year upon his conviction of two charges of reckless driving committed within a period of 12 months, and if both offenses were committed within a 12-month period, it is immaterial that the conviction of the second offense was entered more than 12 months after the first. The date of the offense, not the date of the conviction, is the determinative factor. Snyder v. Scheidt, 246 N.C. 81, 97 S.E.2d 461 (1957).

Notice of Second Conviction Must Precede Revocation. — The Department (now Division) of Motor Vehicles was not authorized under this section to revoke plaintiff's license before it received notice of his second conviction for reckless driving. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Revocation Not Mandatory for Reckless Driving. — The offense of reckless driving in violation of G.S. 20-140 is not an offense for which, upon conviction, the revocation or suspension of an operator's license is mandatory. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

§ 20-17.1. Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs.

(a) The Commissioner, upon receipt of notice that any person has been legally adjudicated incompetent or has been involuntarily committed to an institution for the treatment of alcoholism or drug addiction, shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle. If a person has been adjudicated incompetent under Chapter 35A of the General Statutes, in making an inquiry into the facts, the Commissioner shall consider the clerk of court's recommendation regarding whether the incompetent person should be allowed to retain his or her driving privilege. Unless the Commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons and property, he shall revoke such person's driving privilege. Provided that if such person requests, in writing, a hearing, he shall retain his license until after the hearing, and if the revocation is sustained after such hearing, the person whose driving privilege has been revoked under the provisions of this section, shall have the right to a review by the review board as provided in G.S. 20-9(g)(4) upon written request filed with the Division.

(b) If any person shall be adjudicated as incompetent or is involuntarily committed for the treatment of alcoholism or drug addiction, the clerk of the court in which any such adjudication is made shall forthwith send a certified copy of abstract thereof to the Commissioner.

(c) Repealed by Session Laws 1973, c. 475, s. 31/2.

(d) It is the intent of this section that the provisions herein shall be carried out by the Commissioner of Motor Vehicles for the safety of the motoring public. The Commissioner shall have authority to make such agreements as are necessary with the persons in charge of every institution of any nature for the care and treatment of alcoholics or habitual users of narcotic drugs, to effectively carry out the duty hereby imposed and the person in charge of the institutions described above shall cooperate with and assist the Commissioner of Motor Vehicles.

(e) Notwithstanding the provisions of G.S. 8-53, 8-53.2, and Article 3 of Chapter 122C of the General Statutes, the person or persons in charge of any institution as set out in subsection (a) hereinabove shall furnish such information as may be required for the effective enforcement of this section. Information furnished to the Division of Motor Vehicles as provided herein shall be confidential and the Commissioner of Motor Vehicles shall be subject to the same penalties and is granted the same protection as is the department, institution or individual furnishing such information. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Motor Vehicles or his authorized agents the information as required herein.

(f) Revocations under this section may be reviewed as provided in G.S. 20-9(g)(4). (1947, c. 1006, s. 9; 1953, c. 1300, s. 36; 1955, c. 1187, s. 16; 1969, c. 186, s. 1; c. 1125; 1971, c. 208, ss. 1, 11/2; c. 401, s. 1; c. 767; 1973, c. 475, s. 31/2; c. 1362; 1975, c. 716, s. 5; 1983, c. 768, s. 3; 1987, c. 720, s. 1; 2008-182, s. 1.)

Effect of Amendments. — Session Laws 2008-182, s. 1, effective October 1, 2008, and applicable to persons adjudicated incompetent under Chapter 35A of the General Statutes on or after that date, added the second sentence of subsection (a).

Legal Periodicals. — For note on reporting patients for review of driver's license, see 48 N.C.L. Rev. 1003 (1970).

CASE NOTES

Constitutionality. — This section is neither vague nor overbroad. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

A legitimate State interest may be rationally advanced by the classification drawn in this section, thus it does not deny equal protection of the laws to those involuntarily committed. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

To decide that those whose institutionalization was legally coerced present, as a class, significantly greater highway safety problems and thus require renewed scrutiny as to driving skills is, whatever its wisdom or efficacy or validity in a particular case, not irrational under the equal protection clause. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

That North Carolina has not chosen in this section to include "all alcoholics and drug addicts" is not irrational. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

This section fairly informs those it affects of the standard against which their conduct will be measured, and thus there is no constitutional infirmity presented. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

The Phrase "Is Satisfied" in Subsection (a). — This section imparts an objective standard, and the phrase "is satisfied" refers to the conclusion the Commissioner reaches after his inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle with safety to persons and property. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

There is no substantive constitutional right to drive an automobile. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

But once licenses are issued, their continued possession may become essential in the pursuit of a livelihood, and suspension of issued licenses thus involves State action that adjudicates important interests of the licensees; in such cases the licenses are not to be taken away without that procedural due process required by U.S. Const., Amend. XIV. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

Persons involuntarily committed are entitled to notice and hearing before the Department (now Division) of Motor Vehicles prior to any revocation of their driving privileges. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

The type of "facts" to be looked into and the scope of the "inquiry" are tied to the obvious purpose of this section: to determine driving competency. By themselves they set no standard against which the plaintiff's privilege is judged. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

Period of Revocation. — The one-year period in G.S. 20-19(f) applies to this section. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

§ 20-17.2: Repealed by Session Laws 2006-253, s. 25, effective December 1, 2006, and applicable to offenses committed on or after that date.

§ 20-17.3. Revocation for underage purchasers of alcohol.

The Division shall revoke for one year the driver's license of any person who has been convicted of violating any of the following:

(1) G.S. 18B-302(c), (e), or (f).
(2) G.S. 18B-302(b), if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.
(3) G.S. 18B-302(a1).

If the person's license is currently suspended or revoked, then the revocation under this section shall begin at the termination of that revocation. A person whose license is revoked under this section for a violation of G.S. 18B-302(a1) or G.S. 18B-302(c) shall be eligible for a limited driving privilege under G.S. 20-179.3. (1983, c. 435, s. 36; 2007-537, s. 3.)

§ 20-17.4. Disqualification to drive a commercial motor vehicle.

(a) One Year. — Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

(1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run.

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2.

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was either operating a commercial motor vehicle or while the person was holding a commercial drivers license.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. — A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. — A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. — A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. — A person is disqualified from driving a commercial motor vehicle for life if that person either uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance or is the holder of a commercial drivers license at the time of the commission of any such felony.

(c1) **(Effective March 31, 2010)** Life. — A person shall be disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement, if that person has had a commercial drivers license reinstated in the past and is convicted of another major disqualifying offense as defined in 49 C.F.R. § 383.51(b).

(d) Less Than a Year. — A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, arising from separate incidents occurring within a three-year period, committed in a commercial motor vehicle or while holding a commercial drivers license. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. — A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. — A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked, suspended, or cancelled.

(g) Violation of Out-of-Service Order. — Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. — Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

(1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. — The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. — Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license.

(k) Disqualification for Railroad Grade Crossing Offenses. — Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.
(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.
(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(*l*) Disqualification for Testing Positive in a Drug or Alcohol Test. — Upon receipt of notice of a positive drug or alcohol test, or of refusal to participate in a drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division must disqualify a CDL holder from operating a commercial motor vehicle for a minimum of 30 days and until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503.

(m) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. — The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52.

(n) Disqualification for Conviction of Criminal Offense That Requires Registration Under the Sex Offender and Public Protection Registration Programs. — Effective December 1, 2009, except as otherwise provided by this subsection, a person convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is disqualified from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration under Article 27A of Chapter 14 of the General Statutes. If a person who is registered pursuant to Article 27A of Chapter 14 of the General Statutes on December 1, 2009, also has a valid commercial drivers license with a P or S endorsement that was issued on or before December 1, 2009, then the person is not disqualified under this subsection until that license expires, provided the person does not commit a subsequent offense that requires registration under Article 27A of Chapter 14 of the General Statutes. (1989, c. 771, s. 3; 1991, c. 726, s. 8; 1993, c. 533, s. 5; 1998-149, s. 3; 1998-182, s. 19; 2000-109, s. 7(e); 2002-72, s. 7; 2003-397, s. 2; 2005-156, s. 2; 2005-349, s. 6; 2007-492, s. 1; 2008-175, s. 1; 2009-416, s. 3; 2009-491, s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1112, s. 12 also enacted a G.S. 20-17.4, to be effective June 1, 1989, through June 30, 1989, and to provide for mandatory revocation of a Class A or Class B license for drivers convicted of impaired driving in a commercial vehicle. Session Laws 1989, c. 771, s. 18, effective June 1, 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, G.S. 20-17.4, as enacted by c. 1112, never went into effect.

Session Laws 2009-491, s. 7, provides in part: "This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009."

Effect of Amendments. — Session Laws 2008-175, s. 1, effective December 1, 2008, and applicable to offenses committed on or after that date, in subdivision (a)(7), substituted "either operating a commercial motor vehicle or while the person was holding a commercial drivers license" for "operating a commercial motor vehicle"; in subsection (c), inserted "either" and added "or is the holder of a commercial drivers license at the time of the commission of any such felony"; in subsection (d), substituted "arising from separate incidents occurring within a three-year period, committed in a commercial motor vehicle or while holding a commercial drivers license" for "committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period"; and, in subsection (*l*), substituted "for Testing Positive in a" for "Based on" and inserted "for a minimum of 30 days and."

Session Laws 2009-416, s. 3, effective March 31, 2010, and applicable to offenses committed on or after that date, added subsection (c1).

Session Laws 2009-491, s. 2, effective December 1, 2009, added subsection (n). For applicability, see Editor's note.

§ 20-17.5. Effect of disqualification.

(a) When No Accompanying Revocation. — A person who is disqualified as the result of a conviction that requires disqualification but not revocation may keep any regular Class C drivers license the person had at the time of the offense resulting in disqualification. If the person had a Class A or Class B regular drivers license or a commercial drivers license when the offense occurred, all of the following apply:

(1) The person must give the license to the court that convicts the person or, if the person is not present when convicted, to the Division.

(2) The person may apply for a regular Class C drivers license.

(b) When Revocation and Disqualification. — When a person is disqualified as the result of a conviction that requires both disqualification and revocation, all of the following apply:

(1) The person must give any drivers license the person has to the court that convicts the person or, if the person is not present when convicted, to the Division.

(2) The person may obtain limited driving privileges to drive a noncommercial motor vehicle during the revocation period to the extent the law would allow limited driving privileges if the person had been driving a noncommercial motor vehicle when the offense occurred. The same procedure, eligibility requirements, and mandatory conditions apply to limited driving privileges authorized by this subdivision that would apply if the person had been driving a noncommercial motor vehicle when the offense occurred.

(3) If the disqualification period is longer than the revocation period, the person may apply for a regular Class C drivers license at the end of the revocation period.

(c) Refusal to Take Chemical Test. — When a person is disqualified for refusing to take a chemical test, all of the following apply:

(1) The person must give any license the person has to a court, a law enforcement officer, or the Division, in accordance with G.S. 20-16.2 and G.S. 20-16.5.

(2) The person may obtain limited driving privileges to drive a noncommercial motor vehicle during the period the person's license is revoked for the refusal that disqualified the person to the extent the law would allow limited driving privileges if the person had been driving a noncommercial motor vehicle at the time of the refusal. The same procedure, eligibility requirements, and mandatory conditions apply to limited driving privileges authorized by this subdivision that would apply if the person had been driving a noncommercial motor vehicle at the time of the refusal.

(3) If the disqualification period is longer than the revocation period, the person may apply for a regular Class C drivers license at the end of the revocation period.

(d) Obtaining Class C Regular License. — A person who is authorized by this section to apply for a regular Class C drivers license and who meets all of the following criteria may obtain a regular Class C drivers license without taking a test:

(1) The person must have had a Class A or Class B regular drivers license or a commercial drivers license when the person was disqualified.
(2) The person's license must have been issued by the Division.
(3) The person's license must not have expired by the date the person applies for a regular Class C drivers license.

Upon application and payment of the fee set in G.S. 20-14 for a duplicate license, the Division shall issue a person who meets these criteria a regular Class C drivers license. The license shall include the same endorsements and restrictions as the former Class A regular, Class B regular, or commercial drivers license, to the extent they apply to a regular Class C drivers license. A regular Class C drivers license issued to a person who meets these criteria expires the same day as the license it replaces.

G.S. 20-7 governs the issuance of a regular Class C drivers license to a person who is authorized by this section to apply for a regular Class C drivers license but who does not meet the listed criteria. In accordance with that statute, the Division may require the person to take a test and the person must pay the license fee.

(e) Restoration Fee. — A person who is disqualified must pay the restoration fee set in G.S. 20-7(i1) the first time any of the following events occurs as a result of the same disqualification:

(1) The Division reinstates a Class A regular drivers license, a Class B regular drivers license, or a commercial drivers license the person had at the time of the disqualification by issuing the person a duplicate license.
(2) The Division issues a Class A regular drivers license, a Class B regular drivers license, or a commercial drivers license to the person.
(3) If the person's license was revoked because of the conviction or act requiring disqualification, the Division issues a regular Class C drivers license to the person.

The restoration fee does not apply the second time any of these events occurs as a result of the same disqualification. (1991, c. 726, s. 9.)

§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Scope. — This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).
(2) G.S. 20-138.2, commercial DWI.
(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.
(4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol concentration of greater than 0.00 and less than 0.04, if the person's drivers license was revoked under G.S. 20-17(a)(13).
(5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child care vehicle with an alcohol concentration of greater than 0.00, if the person's drivers license was revoked under G.S. 20-17(a)(14).

(b) Requirement for Restoring License. — The Division must receive a certificate of completion for a person who is subject to this section before the Division can restore that person's license. The revocation period for a person who is subject to this section is extended until the Division receives the certificate of completion.

(c) Certificate of Completion. — To obtain a certificate of completion, a person must have a substance abuse assessment and, depending on the results of the assessment, must complete either an alcohol and drug education traffic (ADET) school or a substance abuse treatment program. The substance abuse assessment must be conducted by one of the entities authorized by the Department of Health and Human Services to conduct assessments. G.S. 122C-142.1 describes the procedure for obtaining a certificate of completion.

(d) Notice of Requirement. — When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the local area mental health, developmental disabilities, and substance abuse program for a list of agencies and entities in the person's area that are authorized to make a substance abuse assessment and provide the education or treatment needed to obtain a certificate of completion.

(e) Effect on Limited Driving Privileges. — A person who is subject to this section is not eligible for limited driving privileges if the revocation period for the offense that caused the person to become subject to this section has ended and the person's license remains revoked only because the Division has not obtained a certificate of completion for that person. The issuance of limited driving privileges during the revocation period for the offense that caused the person to become subject to this section is governed by the statutes that apply to that offense. (1995, c. 496, ss. 1, 11, 12; 1997-443, s. 11A.118(a); 1998-182, s. 20.)

Editor's Note. — Session Laws 1995, c. 496, ss. 11 and 12, which substituted "less than 21 years old" for "a provisional licensee" in the catchline and in subdivision (a)(3), were to become effective only if House Bill 353 of the 1995 General Assembly was enacted. House Bill 353 was ratified as Session Laws 1995, c. 506, on July 28, 1995.

CASE NOTES

Indefinite Revocation. — Although the trial court should have submitted the aggravating factor in G.S. 20-179(c)(2), providing that at the time of the offense, defendant was driving while defendant's license was revoked, as defined by G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a), the error was harmless beyond a reasonable doubt. Defendant's driving record, admitted by the State, showed that defendant's driver's license was indefinitely revoked due to an impaired driving conviction and that the license had not been reinstated, which meant that evidence of the aggravating factor was overwhelming and uncontroverted such that a sentence beyond the statutory maximum could be imposed. State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008).

§ 20-17.7. Commercial motor vehicle out-of-service fines authorized.

The Secretary of Crime Control and Public Safety may adopt rules implementing fines for violation of out-of-service criteria as defined in 49 C.F.R. § 390.5. These fines may not exceed the schedule of fines adopted by the Commercial Motor Vehicle Safety Alliance that is in effect on the date of the violations. (1999-330, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 3.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-17.8. (For change in effective date, see Editor's note) Restoration of a license after certain driving while impaired convictions; ignition interlock.

(a) Scope. — This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.15 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person's alcohol concentration.

(a1) **(Expires December 1, 2014)** Additional Scope. — This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5.

(b) **(Effective until December 1, 2014)** Ignition Interlock Required. — Except as provided in subsection (*l*) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

(b) **(Effective December 1, 2014)** Ignition Interlock Required. — Except as provided in subsection (*l*) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

G.S. 20-17.8(b) is set out twice. See note.

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(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

(c) Length of Requirement. — The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(c1) Vehicles Subject to Requirement. — A person subject to this section shall have all registered vehicles owned by that person equipped with a functioning ignition interlock system of a type approved by the Commissioner, unless the Division determines that one or more specific registered vehicles owned by that person are relied upon by another member of that person's family for transportation and that the vehicle is not in the possession of the person subject to this section.

(d) Effect of Limited Driving Privileges. — If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. — When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. — A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section. If a person subject to this section is charged with driving while license revoked by violating the requirements of subsection (c1) of this section, and no other violation of this section is alleged, the court may make a determination at the hearing of the case that the vehicle, on which the ignition interlock system was not installed, was relied upon by another member of that person's family for transportation and that the vehicle was not in the possession of the person subject to this section, and therefore the vehicle was not required to be equipped with a functioning ignition interlock system. If the court determines that the vehicle was not required to be equipped with a functioning ignition interlock system and the person subject to this section has committed no other violation of this section, the court shall find the person not guilty of driving while license revoked.

(g) Effect of Violation of Restriction When Driving While License Revoked Not Charged. — A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year.

(h) Beginning of Revocation Period. — If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. — If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. — If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and
(2) The person:
  a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or
  b. Did not personally activate the ignition interlock system before driving the vehicle; or
  c. Drove the vehicle in violation of an applicable alcohol concentration restriction prescribed by subdivision (b)(3) of this section.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. — When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section.

(*l*) Medical Exception to Requirement. — A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4). (1999-406, s. 3; 2000-155, ss. 1-3; 2001-487, s. 8; 2006-253, ss. 22.3, 22.4; 2007-493, ss. 5, 10, 28; 2009-369, ss. 5, 6.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until December 1, 2014. The second version of subsection (b) set out above is effective December 1, 2014.

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1999-406, s. 3 having been 20-17.7.

Session Laws 1999-406, s. 18, states that the act does not obligate the General Assembly to appropriate additional funds, and that the act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Session Laws 2006-253, s. 33, as amended by Session Laws 2007-493, s. 5, provides in part: "Section 22.4 becomes effective December 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date."

Effect of Amendments. — Session Laws 2007-493, s. 10, effective August 30, 2007, substituted "(iii) a violation of G.S. 20-141.4" for "(iii) felony death by vehicle, G.S. 20-141.4(a1)" in subdivision (b)(3)c.

Session Laws 2007-493, s. 28, effective December 1, 2007, and applicable to offenses committed on or after that date, in subsection (a), substituted "concentration of 0.15" for "concentration of 0.16" in subdivision (a)(1), and added the last paragraph of the subsection.

Session Laws 2009-369, ss. 5 and 6, effective December 1, 2009, and applicable to applications for reinstatement that occur on or after that date, and expiring December 1, 2014, added subsection (a1), and in subdivision (b)(3)b., inserted "or subsection (a1)" near the middle.

CASE NOTES

No Exceptions to Ignition Interlock Device. — G.S. 20-17.8 does not provide any exceptions to the mandatory ignition interlock device. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

Review Process. — There is no review process under G.S. 20-17.8 which would allow a defendant to present her arguments to the Division of Motor Vehicles (DMV); G.S. 20-17.8(j) governs appeals of a DMV decision in cases where a person has violated the requirements of G.S. 20-17.8, but it does not govern instances where a person seeks an exemption from the requirement. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

No Right to Appeal Mandatory Revocation. — There is no right to appeal to a court where the cancellation of the license is mandatory, and the provisions of G.S. 20-17.8 are mandatory; thus, the district court could not review, under G.S. 20-25, a decision by the Division of Motor Vehicles that decided not to reinstate, without a requisite ignition interlock device, the license of a driver whose license had been suspended for violating G.S. 20-17.8. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

§ 20-17.9. Revocation of commercial drivers license with a P or S endorsement upon conviction of certain offenses.

The Division shall revoke the commercial drivers license with a P or S endorsement of any person convicted of any offense on or after December 1, 2009, that requires registration under Article 27A of Chapter 14 of the General Statutes. The person may apply for the issuance of a new commercial drivers license pursuant to this Chapter, but, pursuant to G.S. 20-17.4, shall remain disqualified from obtaining a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration. (2009-491, s. 3.)

Editor's Note. — Session Laws 2009-491, s. 7, provides: "This act becomes effective December 1, 2009. This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009."

§ 20-18. Conviction of offenses described in § 20-181 not ground for suspension or revocation.

Conviction of offenses described in G.S. 20-181 shall not be cause for the suspension or revocation of driver's license under the terms of this Article. (1939, c. 351, s. 2; 1955, c. 913, s. 1; 1979, c. 667, s. 41.)

CASE NOTES

Cited in State v. McDaniels, 219 N.C. 763, 14 S.E.2d 793 (1941).

§ 20-19. Period of suspension or revocation; conditions of restoration.

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) **(Effective until December 1, 2014)** Restriction; Revocations. — When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a

vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, habitual impaired driving, G.S. 20-138.5, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

G.S. 20-19(c3) is set out twice. See note.

(c3) **(Effective December 1, 2014)** Restriction; Revocations. — When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

G.S. 20-19(c3) is set out twice. See note.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. — When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. — Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. — There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration.

a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.

b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.

c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent.

(e1) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least three years under subsection (e) if the person provides the Division with satisfactory proof of all of the following:

(1) In the three years immediately preceding the person's application for a restored license, the person has not been convicted in North

Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.

(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration.

a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.

b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.

c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

(e2) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof of all of the following:

(1) The person has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Department of Correction.

(2) The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) The person is not currently an excessive user of drugs or prescription drugs.

(4) The person is not unlawfully using any controlled substance.

(e3) **(Effective until December 1, 2014)** If the Division restores a person's license under subsection (e1), (e2), or (e4) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration.

(e3) **(Effective December 1, 2014)** If the Division restores a person's license under subsection (e1) or (e2) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration.

(e4) **(Expires December 1, 2014)** When a person's license is revoked under G.S. 20-138.5(d), the Division may conditionally restore the license of that person after it has been revoked for at least 10 years after the completion of any sentence imposed by the court, if the person provides the Division with satisfactory proof of all of the following:

(1) In the 10 years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any other criminal offense.

(2) The person is not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(g2) When a license is revoked under G.S. 20-17(a)(16), the period of revocation is 90 days for a second conviction and six months for a third or subsequent conviction. The term "second or subsequent conviction" shall have the same meaning as found in G.S. 20-17(a)(16).

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) **(For applicability, see Editor's note)** When a person's license is revoked under G.S. 20-17(a)(1) or G.S. 20-17(a)(9), and the offense is one involving impaired driving and a fatality, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least five years under this subsection if he provides the Division with satisfactory proof that:

(1) In the five years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to seven years from the date of restoration.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) **(Effective until December 1, 2014)** Before the Division restores a driver's license that has been suspended or revoked under G.S. 20-138.5(d), or under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet

G.S. 20-19(k) is set out twice. See note.

private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(k) **(Effective December 1, 2014)** Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility

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required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A; 1969, c. 242; 1971, c. 619, ss. 8-10; 1973, c. 1445, ss. 1-4; 1975, c. 716, s. 5; 1979, c. 903, ss. 4-6; 1981, c. 412, s. 4; c. 747, ss. 34, 66; 1983, c. 435, s. 17; 1983 (Reg. Sess., 1984), c. 1101, s. 18; 1987, c. 869, s. 12; 1987 (Reg. Sess., 1988), c. 1112; 1989, c. 436, s. 5; c. 771, s. 18; 1995, c. 506, s. 8; 1998-182, s. 21; 1999-406, s. 2; 1999-452, ss. 11, 12; 2000-140, ss. 3, 4; 2000-155, s. 6; 2001-352, s. 4; 2007-165, ss. 1(a), (b); 2007-493, ss. 11-14; 2008-187, s. 9; 2009-99, s. 1; 2009-369, ss. 1-4; 2009-500, ss. 1, 2.)

Cross References. — As to Department of Corrections establishing regulations for continuous alcohol monitoring systems, see G.S. 15A-1343.3.

Editor's Note. — Session Laws 1999-406, s. 18, states that the act does not obligate the General Assembly to appropriate additional funds, and that the act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Session Laws 2007-165, s. 9, provides in part: "Sections 1 through 5 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. Nothing in this act shall be construed to prohibit a court from either continuing or allowing the use of continuous alcohol monitoring systems as evidence of alcohol abstinence prior to the effective date of Sections 1 through 5."

Session Laws 2007-493, s. 33, as amended by Session Laws 2009-99, s. 1, provides: "Sections 26, 27, 28, 29, 30, and 31 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. Section 14 of this act applies to persons whose waiting period for a hearing on conditional restoration commences on or after the effective date of this act. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

The amendment by Session Laws 2007-493, s. 14, rewrote subsection (i), and was effective August 30, 2007, and applicable to persons whose waiting period for a hearing on conditional restoration commences on or after that date, pursuant to Session Laws 2007-493, s. 33, as amended by Session Laws 2009-99, s. 1.

Effect of Amendments. — Session Laws 2007-165, ss. 1(a) and 1(b), effective December 1, 2007, and applicable to offenses committed on or after that date, in subdivisions (d)(2) and (e)(2), substituted "alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance" for "alcohol or drugs"; added the second paragraph in subsection (e), and added subdivisions (e)(1) through (e)(4). For applicability, see Editor's note.

Session Laws 2007-493, ss. 11 through 14, effective August 30, 2007, in subdivision (c3)(4), substituted "a violation of G.S. 20-141.4," for "felony death by vehicle, G.S. 20-141.4(a1),"; in subsection (d), inserted "(i)" preceding "G.S. 20-17(a)(2)" and "or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3)" at the end of the first sentence; in subsection (e), inserted "(i)" preceding "G.S. 20-17(a)(2)" and "or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4)" near the end of the first sentence; substituted "five years" for "three years" in the last sentence of subsection (e); and rewrote subsection (i). For applicability, see Editor's note.

Session Laws 2008-187, s. 9, effective August 7, 2008, rewrote subsection (e) as present subsections (e), (e1), (e2), and (e3).

Session Laws 2009-369, ss. 1 through 4, effective December 1, 2009, and applicable to applications for reinstatement that occur on or after that date, and expiring December 1, 2014, in subsection (c3), in the introductory language, inserted "G.S. 20-138.5(d)"; in subdivision (c3)(3), inserted "habitual impaired driving, G.S. 20-138.5"; and in the last paragraph, inserted "or G.S. 20-138.5(d)" in the last sentence; in subsection (e3) substituted "(e1), (e2), or (e4)" for "(e1) or (e2)"; added subsection (e4); and in subsection (k), inserted "G.S. 20-138.5(d), or under" in the introductory language.

Session Laws 2009-500, ss. 1 and 2, effective for hearings or proceedings occurring on or after December 1, 2009, added the second sentence in subdivisions (d)(2) and (e1)(2); and added subdivisions (d)(2)a.-(d)(2)c and (e1)(2)a.-(e1)(2)c.

Legal Periodicals. — For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

CASE NOTES

The power to issue, suspend or revoke a driver's license is vested exclusively in the Division of Motor Vehicles, subject to review by the superior court and, upon appeal, by the appellate division. Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

Under G.S. 20-16(a)(10) and subsection (b) of this section, the discretionary authority to suspend petitioner's license for a period not exceeding 12 months was vested exclusively in the Division of Motor Vehicles. No discretionary power was conferred upon a superior court. Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

Subsection (e) of this section is not overbroad in violation of the Constitution since no conduct within the purview of the phrase "violation of liquor laws of North Carolina," including the commission of the crime of public drunkenness, is a constitutionally protected activity. In re Harris, 37 N.C. App. 590, 246 S.E.2d 532 (1978).

Subsection (e) Is Not Unconstitutionally Vague. — The phrase "liquor laws" in subsection (e) of this section, is not a term so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. In re Harris, 37 N.C. App. 590, 246 S.E.2d 532 (1978).

In enacting subsection (e) of this section, the legislature was demanding complete compliance with all laws governing the use of drugs, alcohol, and motor vehicles. In re Harris, 37 N.C. App. 590, 246 S.E.2d 532 (1978).

The purpose of this section is to provide a uniform standard period for the withholding of the privilege to operate a motor vehicle following certain offenses. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

Violation of "alcoholic beverages laws". — The legislature fully intended to include the crime of public drunkenness in the phrase "violation of liquor (now 'alcoholic beverages') laws of North Carolina" in subsection (e) of this section. In re Harris, 37 N.C. App. 590, 246 S.E.2d 532 (1978).

Out-of-State Conviction to Be Counted as Conviction for Purpose of Subsection (e). — An out-of-state conviction of operating a motor vehicle upon the public highway while under the influence of intoxicating liquor or an impairing drug (now impaired driving) is to be counted as a conviction for the purpose of the operation of the mandatory provision of subsection (e). In re Oates, 18 N.C. App. 320, 196 S.E.2d 596 (1973).

No Contest Plea May Be Used as Prior Conviction. — The judgment entered on a plea of no contest to a previous charge of driving with a blood alcohol content of .10 percent or more may be used as a prior conviction by the DMV for purposes of revoking a driver's license. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Certiorari to Review Mandatory Suspension. — Petitioner whose driving privilege was mandatorily suspended under G.S. 20-17(2) and G.S. 20-19(e) did not have the right to appeal under G.S. 20-25 or under the Administrative Procedure Act, Chapter 150B. However, the superior court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Where petitioner, seeking conditional restoration of his driving privileges, pled sufficient facts to show he did not have right to appeal from final decision of DMV, he could then have petitioned for writ of certiorari to have case reviewed by superior court. Thus, superior court had jurisdiction to review case. Penuel v. Hiatt, 100 N.C. App. 268, 396 S.E.2d 85 (1990).

Review of Permanent Revocation Under Subsection (e). — Where the Department (now Division) of Motor Vehicles permanently revoked plaintiff's driver's license for a third offense of driving while under the influence, the departmental action was mandatory, and the superior court was without authority to revoke or make any order with reference thereto. Rhyne v. Garrett, 18 N.C. App. 565, 197 S.E.2d 235 (1973).

Trial court correctly reviewed the North Carolina Division of Motor Vehicles' cancellation of a driver's conditionally restored driving privileges under a petition for writ of certiorari rather than de novo review because although there was no right to appeal a cancellation or revocation under G.S. 20-25, the driver could seek certiorari pursuant to G.S. 20-19(e). Cole v. Faulkner, 155 N.C. App. 592, 573 S.E.2d 614, 2002 N.C. App. LEXIS 1589 (2002).

Review of Refusal to Reinstate License. — Once the right to drive has been mandatorily revoked and a petitioner unsuccessfully seeks to have the license reinstated by the DMV, no superior court review of the denial is mandated unless the denial was arbitrary or illegal, because reinstatement is not a legal right but is an act of grace. Alpiser v. Eagle Pontiac-GMC-Isuzu, Inc., 97 N.C. App. 610, 389 S.E.2d 293 (1990).

The provisions of subsection (f) of this section are mandatory. Snyder v. Scheidt, 246 N.C. 81, 97 S.E.2d 461 (1957).

The provisions of G.S. 20-17(6) and subsection (f) of this section are mandatory and not discretionary. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Subsections (d) and (j) of this section must be read together, giving consideration both to the legislative intent of ensuring standard penalties for the same offenses and to the policy of preventing circumvention of this section. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

Division Required to Revoke License for Statutory Period. — Upon receiving a record of an operator's or chauffeur's conviction upon two charges of reckless driving committed within a period of 12 months, the Department (now Division) of Motor Vehicles is required to forthwith revoke the license of such persons for the statutory period. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Where there is mandatory revocation under subdivision (2) of G.S. 20-17, the period of revocation shall be as provided in this section. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959); In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

Subsection (f)'s one-year period applies to § 20-17.1. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

Effective Date of Revocation. — A revocation based on a second offense for driving while under the influence of intoxicating liquor or a narcotic drug (now impaired driving) must be for a period of three (now four) years, and the effective date of the revocation for such period should not begin prior to the date of the second conviction. Likewise, when a license is permanently revoked, the effective date of such revocation should not be earlier than the date of the conviction for the third offense. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

Period of Suspension Runs from Date of Order by Division. — When within five days from receipt of notice of conviction the Department (now Division) ordered the revocation of an operator's license for one year, the revocation was in effect until the same date in the following year, and did not expire one year from the date of conviction or the date of receipt of notice by the Department (now Division). State v. Ball, 255 N.C. 351, 121 S.E.2d 604 (1961).

Injunction Not Available to Plaintiff Who Could Have Prevented Delay in Start of Revocation Period. — Where the elapse of approximately 15 months between plaintiff's last conviction for reckless driving and the order of revocation was not caused by defendant, Commissioner of Motor Vehicles or his Department (now Division), but the delay apparently resulted from the failure of the clerk of the court where plaintiff was last convicted to act promptly in forwarding a record of the conviction to the Department (now Division) of Motor Vehicles, and plaintiff could have prevented any delay in the start of the revocation period by surrendering his license to the clerk and obtaining a receipt therefor at the time of his second conviction, plaintiff was not entitled to injunctive relief. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Reinstatement or the receipt of a new license during the revocation period is not a legal right of the defendant, but an act of grace which the General Assembly permits, but does not require, the Department (now Division) to apply. The authority to exercise or apply this act of grace is granted to the Department (now Division), not to the courts. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

Court Order Requiring Conditional Restoration Held Error. — Where petitioner offered no support for his allegation that the DMV's denial of a conditional restoration of his license, which had been mandatorily revoked under G.S. 20-17, was an arbitrary and capricious act and was in disregard of the law set forth in this section, it was error for the Superior Court to enter an order requiring the DMV to conditionally restore petitioner's driving privileges. Penuel v. Hiatt, 97 N.C. App. 616, 389 S.E.2d 289, aff'd on petition to rehear, 100 N.C. App. 268, 396 S.E.2d 85 (1990).

Warrant Need Not Charge Second Offense in Order to Support Revocation under Subsection (d). — Where defendant's driver's license had previously been suspended for a period of one year for conviction of driving while under the influence of intoxicating liquor, and defendant pleaded guilty to another such offense upon warrant not charging a second offense, the Department (now Division) of Motor Vehicles, upon receipt of the report of the later conviction, must revoke defendant's license for the period provided by subsection (d) of this section. Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

Right to Inherit from Life Insurance Policies. — While paternity had to be established for an illegitimate child to inherit from a father who died intestate, North Carolina had no statute requiring that paternity be established for an illegitimate child to benefit from a life insurance policy, and the policy at issue in defendant claimant's case did not exclude illegitimate children unless paternity had been judicially established. Fort Dearborn Life Ins. Co. v. Turner, 521 F. Supp. 2d 499, 2007 U.S. Dist. LEXIS 84333 (E.D.N.C. Oct. 3, 2007).

Applied in Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); State v. Moore, 247 N.C. 368, 101 S.E.2d 26 (1957); Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961); Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963); In re Woods, 33 N.C. App. 86, 234 S.E.2d 45 (1977); State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985); State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985); Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Cited in State v. Letterlough, 6 N.C. App. 36, 169 S.E.2d 269 (1969); State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838 (1970); Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971); Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512, 2000 N.C. App. LEXIS 496 (2000); State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005); State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008); Powers v. Tatum, — N.C. App. —, 676 S.E.2d 89, 2009 N.C. App. LEXIS 527 (2009).

§ 20-20: Repealed by Session Laws 1981, c. 938, s. 5.

Cross References. — For present provisions concerning the surrender of an operator's license which has been revoked or suspended, see G.S. 20-45(b).

§ 20-20.1. Limited driving privilege for certain revocations.

(a) Definitions. — The following definitions apply in this section:

(1) Limited driving privilege. — A judgment issued by a court authorizing a person with a revoked drivers license to drive under specified terms and conditions.

(2) Nonstandard working hours. — Anytime other than 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(3) Standard working hours. — Anytime from 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(4) Underlying offense. — The offense for which a person's drivers license was revoked when the person was charged under G.S. 20-28(a), driving with a revoked license, or under G.S. 20-28.1, committing a motor vehicle moving offense while driving with a revoked license.

(b) Eligibility. — A person is eligible to apply for a limited driving privilege under this section if all of the following conditions apply:

(1) The person's license is currently revoked under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the revocation for the period required in subsection (c) of this section immediately preceding the date the person files a petition for a limited driving privilege under this section.

(3) The person's underlying offense is not an offense involving impaired driving and, if the person's license is revoked under G.S. 20-28.1 for committing a motor vehicle moving offense while driving with a revoked license, the moving offense is not an offense involving impaired driving.

(4) The revocation period for the underlying offense has expired.

(5) The revocation under G.S. 20-28(a) or G.S. 20-28.1 is the only revocation in effect.

(6) The person is not eligible to receive a limited driving privilege under any other law.

(7) The person has not held a limited driving privilege issued under this section at anytime during the three years prior to the date the person files the current petition.

(8) The person has no pending charges for any motor vehicle offense in this or in any other state and has no unpaid motor vehicle fines or penalties in this or in any other state.

(9) The person's drivers license issued by another state has not been revoked by that state.

(10) G.S. 20-9(e) or G.S. 20-9(f) does not prohibit the Division from issuing the person a license.

(c) Compliance Period. — The following table sets out the period during which a person must comply with a revocation under G.S. 20-28(a) or G.S. 20-28.1 to be eligible for a limited driving privilege under this section:

Revocation Period	**Compliance Period**
1 Year	90 Days
2 Years	1 Year
Permanent	2 Years

(d) Petition. — A person may apply for a limited driving privilege under this section by filing a petition. A petition filed under this section is separate from the action that resulted in the initial revocation and is a civil action. A petition must be filed in district court in the county of the person's residence as reflected by the Division's records or, if the Division's records are inaccurate, in the county of the person's actual residence. A person must attach to a petition a copy of the person's motor vehicle record. A petition must include a sworn statement that the person filing the petition is eligible for a limited driving privilege under this section.

A court, for good cause shown, may issue a limited driving privilege to an eligible person in accordance with this section. The costs required under G.S. 7A-305(a) and G.S. 20-20.2 apply to a petition filed under this section. The clerk of court for the court that issues a limited driving privilege under this section must send a copy of the limited driving privilege to the Division.

(e) Scope of Privilege. — A limited driving privilege restricts the person to essential driving related to one or more of the purposes listed in this subsection. Any driving that is not related to the purposes authorized in this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as otherwise provided, all driving must be for a purpose and done within the restrictions specified in the privilege.

The permissible purposes for a limited driving privilege are:

(1) Travel to and from the person's place of employment and in the course of employment.

(2) Travel necessary for maintenance of the person's household.

(3) Travel to provide emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person. Driving related to emergency medical care is authorized at anytime and without restriction as to routes.

(f) Employment Driving in Standard Working Hours. — The court may authorize driving for employment-related purposes during standard working hours without specifying times and routes for the driving. If the person is required to drive for essential employment-related purposes only during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or for authorized household maintenance. The limited driving privilege must state the name and address of the person's employer and may, in the discretion of the court, include other information and restrictions applicable to employment-related driving.

(g) Employment Driving in Nonstandard Working Hours. — If a person is required to drive during nonstandard working hours for an essential employment-related purpose and the person provides documentation of that fact to the court, the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the person is employed by another, the limited driving privilege must state the name and address of the person's employer and may, in the discretion of the court, include other information and restrictions applicable to employment-related driving. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege must specify the general times and routes by which the person may drive to and from work and must restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place but is unable to specify the times during which the driving will occur, the limited driving privilege must specify the general routes by which the person may drive to and from work and must restrict driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries within which the person may drive and must restrict driving to those times and boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, the limited driving privilege must specify the geographic boundaries within which the person may drive and must restrict driving to those boundaries.

(h) Household Maintenance. — A limited driving privilege may allow driving for maintenance of the household only during standard working hours. The court, at its discretion, may impose additional restrictions on driving for the maintenance of the household.

(i) Restrictions. — A limited driving privilege that is not authorized by this section or that does not contain the restrictions required by law is invalid. A limited driving privilege issued under this section is subject to the following conditions:

(1) Financial responsibility. — A person applying for a limited driving privilege under this section must provide the court proof of financial responsibility acceptable under G.S. 20-16.1(g) and must maintain the financial responsibility during the period of the limited driving privilege.

(2) Alcohol restrictions. — A person who received a limited driving privilege under this section may not consume alcohol while driving or drive at anytime while the person has remaining in the person's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts.

(3) Others. — The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(j) Term and Reinstatement. — The term of a limited driving privilege issued under this section is the shorter of one year or the length of time remaining in the revocation period imposed under G.S. 20-28(a) or G.S. 20-28.1. When the term of the limited driving privilege expires, the Division must reinstate the person's license if the person meets all of the conditions listed in this subsection. The Division may impose restrictions or conditions on the new license in accordance with G.S. 20-7(e). The conditions are:

(1) Payment of the restoration fee as required under G.S. 20-7(i1).

(2) Providing proof of financial responsibility as required under G.S. 20-7(c1).

(3) Providing the proof required for reinstatement of a license under G.S. 20-28(c1).

(k) Modification. — A court may modify or revoke a person's limited driving privilege issued under this section upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge must indicate in the order of modification or revocation the reasons for the order or make specific findings indicating the reason for the order and enter those findings in the record of the case. When a court issues an order of modification or revocation, the clerk of court must send a copy of the order to the Division.

(*l*) Effect of Violation. — A violation of a limited driving privilege issued under this section constitutes the offense of driving while license revoked under G.S. 20-28. When a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege is suspended pending the final disposition of the charge. (2007-293, s. 1; 2007-323, s. 30.11(d); 2007-345, s. 9.1(c); 2008-118, s. 2.9(b).)

Editor's Note. — Session Laws 2007-345, s. 9.1(c), effective August 6, 2007, repealed Session Laws 2007-323, s. 30.11(d), effective December 1, 2007, which would have deleted the second sentence of the second paragraph of subsection (d).

Effect of Amendments. — Session Laws 2008-118, s. 2.9(b), effective July 1, 2008, substituted "and G.S. 20-20.2" for "and (a3)" in the second paragraph of subsection (d).

§ 20-20.2. Processing fee for limited driving privilege.

Upon the issuance of a limited driving privilege by a court under this Chapter, the applicant or petitioner must pay, in addition to any other costs associated with obtaining the privilege, a processing fee of one hundred dollars ($100.00). The applicant or petitioner shall pay this fee to the clerk of superior court in the county in which the limited driving privilege is issued. The fee must be remitted to the State Treasurer and used for support of the General Court of Justice. The failure to pay this fee shall render the privilege invalid. (2007-323, s. 30.11(b); 2007-345, s. 9.1(b).)

§ 20-21. No operation under foreign license during suspension or revocation in this State.

Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this Article shall not operate a motor vehicle in this State under a license, permit or registration issued by another jurisdiction or otherwise during such suspension, or after such revocation until a new license is obtained when and as permitted under this Article. (1935, c. 52, s. 15; 1979, c. 667, s. 41.)

§ 20-22. Suspending privileges of nonresidents and reporting convictions.

(a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Division in like manner and for like cause as a driver's license issued hereunder may be suspended or revoked.

(b) The Division is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. (1935, c. 52, s. 16; 1975, c. 716, s. 5; 1979, c. 667, s. 41.)

CASE NOTES

Revocation of Out-of-State License. — Revocation of defendant's South Dakota driver's license for failure to submit to a chemical analysis was permissible. State v. Streckfuss, 171 N.C. App. 81, 614 S.E.2d 323, 2005 N.C. App. LEXIS 1190 (2005).

Cited in Morrisey v. Crabtree, 143 F. Supp. 105 (M.D.N.C. 1956).

OPINIONS OF ATTORNEY GENERAL

Nonresident Convicted in North Carolina Court. — Upon conviction of a nonresident of driving while under the influence in a North Carolina court, his privilege to drive in North Carolina will be revoked. The court may allow a nonresident a limited privilege to operate a motor vehicle in North Carolina. The court should not require nonresidents to surrender driver's licenses issued by states other than North Carolina. See opinion of Attorney General to Honorable John S. Gardner, District Court Judge, Sixteenth Judicial District, 40 N.C.A.G. 420 (1969).

§ 20-23. Revoking resident's license upon conviction in another state.

The Division may revoke the license of any resident of this State upon receiving notice of the person's conviction in another state of an offense set forth in G.S. 20-26(a). (1935, c. 52, s. 17; 1971, c. 486, s. 2; 1975, c. 716, s. 5; 1979, c. 667, s. 22; 1993, c. 533, s. 6.)

Cross References. — As to Division's authority to suspend license, see G.S. 20-16.

Legal Periodicals. — For note on choice of law rules in North Carolina, see 48 N.C.L. Rev. 243 (1970).

CASE NOTES

Section Construed with G.S. 20-16 and G.S. 20-25. — This section, G.S. 20-16 and G.S. 20-25 must be construed in pari materia. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Section Is Not Mandatory. — The Department (now Division) of Motor Vehicles, under provisions of this section, is merely authorized, not directed, to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

Discretion of Division. — Under the provisions of this section, it is discretionary with the Department (now Division) to suspend or revoke an operator's license upon receiving notice of his conviction in another state of an offense which, if committed in this State, would be grounds for suspension or revocation. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

Notice May Be from Any Source. — This section does not limit the notice of conviction in another state upon which the Department (now Division) may act to notice from a judicial tribunal or other official agency. Under the wording of the statute, from whatever source the notice may come, the Department (now Division) may act. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Licensee May Show Invalidity of Out-of-State Conviction. — Where an order of the Department (now Division) of Motor Vehicles permanently revoking the license of a driver upon a third conviction for operating a motor vehicle while under the influence of intoxicating liquor (now impaired driving) was based in part upon notice of the licensee's conviction of that offense in another state, the licensee had the right to show, if he could, that the proceedings in such other state were irregular, invalid and insufficient to support the reported conviction, and he was entitled to a hearing de novo in the superior court upon his petition for review. The sustaining of a demurrer to such petition was error, petitioner being entitled to an adjudication of the validity of the out-of-state conviction in order to determine whether the revocation should be permanent or for the period of time prescribed by subsection (d) of G.S. 20-19. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

Conviction of Drunken Driving. — Upon a receipt of notification from the highway department of another state that a resident of this State had there been convicted of drunken (now impaired) driving, the Department (now Division) of Motor Vehicles had the right to suspend the driving license of such person. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

Failure to Appear at Trial for Driving Under the Influence in Another State. — Motorist who received citation for driving under the influence in South Carolina and then forfeited bond by not appearing in court had his driver's license properly revoked even though no warrant was issued. Sykes v. Hiatt, 98 N.C. App. 688, 391 S.E.2d 834 (1990).

§ 20-23.1. Suspending or revoking operating privilege of person not holding license.

In any case where the Division would be authorized to suspend or revoke the license of a person but such person does not hold a license, the Division is authorized to suspend or revoke the operating privilege of such a person in like manner as it could suspend or revoke his license if such person held a driver's license, and the provisions of this Chapter governing suspensions, revocations, issuance of a license, and driving after license suspended or revoked, shall apply in the discretion of the Division in the same manner as if the license has been suspended or revoked. (1955, c. 1187, s. 19; 1969, c. 186, s. 2; 1975, c. 716, s. 5; 1979, c. 667, s. 41.)

CASE NOTES

Driving during Period of Suspension Constitutes Violation of § 20-28. — Under the provisions of this section and G.S. 20-28(a), when a person who does not hold a driver's license has his operating privilege revoked or suspended in the manner and under the conditions prescribed by statute, and while such operating privilege is thus suspended or revoked he drives a motor vehicle upon the highways of this State, he violates G.S. 20-28(a). State v. Newborn, 11 N.C. App. 292, 181 S.E.2d 214 (1971).

§ 20-23.2. Suspension of license for conviction of offense involving impaired driving in federal court.

Upon receipt of notice of conviction in any court of the federal government of an offense involving impaired driving, the Division is authorized to revoke the driving privilege of the person convicted in the same manner as if the conviction had occurred in a court of this State. (1969, c. 988; 1971, c. 619, s. 11; 1975, c. 716, s. 5; 1979, c. 903, s. 12; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 18.)

CASE NOTES

Where the law directs suspension, revocation, or nonissuance of a driver's license, the grounds are convictions for moving violations, or other statutory violations relating to highway safety, or situations where an individual's capacity to operate a motor vehicle safely are manifestly questionable. Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984), rev'd on other grounds and modified, 314 N.C. 315, 333 S.E.2d 228 (1985).

§ 20-24. When court or child support enforcement agency to forward license to Division and report convictions, child support delinquencies, and prayers for judgment continued.

(a) License. — A court that convicts a person of an offense that requires revocation of the person's drivers license or revokes a person's drivers license pursuant to G.S. 50-13.12 shall require the person to give the court any regular or commercial drivers license issued to that person. A court that convicts a person of an offense that requires disqualification of the person but would not require revocation of a regular drivers license issued to that person shall require the person to give the court any Class A or Class B regular drivers license and any commercial drivers license issued to that person.

The clerk of court in a non-IV-D case, and the child support enforcement agency in a IV-D case, shall accept a drivers license required to be given to the court under this subsection. A clerk of court or the child support enforcement agency who receives a drivers license shall give the person whose license is received a copy of a dated receipt for the license. The receipt must be on a form approved by the Commissioner. A revocation or disqualification for which a license is received under this subsection is effective as of the date on the receipt for the license.

The clerk of court or the child support enforcement agency shall notify the Division of a license received under this subsection either by forwarding to the Division the license, a record of the conviction for which the license was received, a copy of the court order revoking the license for failure to pay child support for which the license was received, and the original dated receipt for the license or by electronically sending to the Division the information on the license, the record of conviction or court order revoking the license for failure to pay child support, and the receipt given for the license. The clerk of court or the child support enforcement agency must forward the required items unless the Commissioner has given the clerk of court or the child support enforcement agency approval to notify the Division electronically. If the clerk of court or the child support enforcement agency notifies the Division electronically, the clerk of court or the child support enforcement agency must destroy a license received after sending to the Division the required information. The clerk of court or the child support enforcement agency shall notify the Division within 30 days after entry of the conviction or court order revoking the license for failure to pay child support for which the license was received.

(b) Convictions, Court Orders of Drivers License Revocations, and PJCs. — The clerk of court shall send the Division a record of any of the following:

(1) A conviction of a violation of a law regulating the operation of a vehicle.

(2) A conviction for which the convicted person is placed on probation and a condition of probation is that the person not drive a motor vehicle for a period of time, stating the period of time for which the condition applies.

(3) A conviction of a felony in the commission of which a motor vehicle is used, when the judgment includes a finding that a motor vehicle was used in the commission of the felony.

(4) A conviction that requires revocation of the drivers license of the person convicted and is not otherwise reported under subdivision (1).

(4a) A court order revoking drivers license pursuant to G.S. 50-13.12.

(5) An order entering prayer for judgment continued in a case involving an alleged violation of a law regulating the operation of a vehicle.

The child support enforcement agency shall send the Division a record of any court order revoking drivers license pursuant to G.S. 110-142.2(a)(1).

With the approval of the Commissioner, the clerk of court or the child support enforcement agency may forward a record of conviction, court order revoking drivers license, or prayer for judgment continued to the Division by electronic data processing means.

(b1) In any case in which the Division, for any reason, does not receive a record of a conviction or a prayer for judgment continued until more than one year after the date it is entered, the Division may, in its discretion, substitute a period of probation for all or any part of a revocation or disqualification required because of the conviction or prayer for judgment continued.

(c) Repealed by Session Laws 1991, c. 726, s. 10.

(d) Scope. — This Article governs drivers license revocation and disqualification. A drivers license may not be revoked and a person may not be disqualified except in accordance with this Article.

(e) Special Information. — A judgment for a conviction for an offense for which special information is required under this subsection shall, when appropriate, include a finding of the special information. The convictions for which special information is required and the specific information required is as follows:

(1) Homicide. — If a conviction of homicide involves impaired driving, the judgment must indicate that fact.

(2) G.S. 20-138.1, Driving While Impaired. — If a conviction under G.S. 20-138.1 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-138.1 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.

(3) G.S. 20-138.2, Driving Commercial Motor Vehicle While Impaired. — If the commercial motor vehicle involved in an offense under G.S. 20-138.2 was transporting a hazardous material required to be placarded, a judgment for that offense must indicate that fact.

(4) G.S. 20-166, Hit and Run. — If a conviction under G.S. 20-166 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-166 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.

(5) Felony Using Commercial Motor Vehicle. — If a conviction of a felony in which a commercial motor vehicle was used involves the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance, the judgment must indicate that fact. If a commercial motor vehicle used in a felony was transporting a hazardous substance required to be placarded, the judgment for that felony must indicate that fact. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38; 1973, c. 19; 1975, cc. 46, 445; c. 716, s. 5; c. 871, s. 1; 1979, c. 667, s. 41; 1981, c. 416; c. 839; 1983, c. 294, s. 5; c. 435, s. 19; 1985, c. 764, s. 18; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 581, s. 1; c. 658, s. 2; 1989, c. 771, s. 10; 1991, c. 726, s. 10; 1993, c. 533, s. 7; 1995, c. 538, s. 2(c).)

Local Modification. — Hertford as to subsection (b): 1953, c. 1059; Washington, as to subsection (b): 1953, c. 765.

Cross References. — For present provisions regarding definitions for "conviction", which were formerly found in subsection (c) of this section, see G.S. 20-4.01(4a).

CASE NOTES

Jurisdiction to Revoke License. — A municipal court is without authority to revoke a driver's license, the power to suspend or revoke drivers' licenses being vested exclusively in the Department of Revenue, subject to the right of review by the superior court, as provided in G.S. 20-25. State v. McDaniels, 219 N.C. 763, 14 S.E.2d 793 (1941).

Meaning of Forfeiture of Bail or Collateral. — "Bail" as here used means security for a defendant's appearance in court to answer a criminal charge there pending. Ordinarily it is evidenced by a bond or recognizance which becomes a record of the court. The forfeiture thereof is a judicial act. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

The mere deposit of security with an arresting officer or magistrate pending issuance and service of warrant, which deposit is retained without the semblance of judicial or legal forfeiture, is not a forfeiture of "bail" within the meaning of subsection (c) of this section. In re

Wright, 228 N.C. 584, 46 S.E.2d 696 (1948); In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

Where no warrant is served, no legal action is pending in court; and when no legal action is pending, there can be no valid judgment of forfeiture of bail. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

Bond forfeiture held to be equivalent to a conviction of driving while under the influence of an intoxicant. Rhyne v. Garrett, 18 N.C. App. 565, 197 S.E.2d 235 (1973).

Plea of Nolo Contendere. — Where the petitioner entered a plea of nolo contendere to the charge of a second offense of operating an automobile upon the public highways of the State while under the influence of intoxicating liquor (now impaired driving), which plea was accepted by the court, for the purposes of that case in that court, such plea was equivalent to a plea of guilty, or conviction by a jury, and subsection (a) of this section required that court to enter a notation of such conviction upon the license of petitioner to operate an automobile in North Carolina, and to compel the surrender to it of such license then held by petitioner, and thereupon to forward the license, together with a record of the conviction, to the Department (now Division) of Motor Vehicles. Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954).

"Final Conviction." — Where defendant pleaded guilty to driving without a license, and judge's order granted a prayer for judgment continued on condition that plaintiff not violate any motor vehicle laws and that plaintiff make a $75.00 contribution to the school board, the condition "that he make a $75.00 contribution to the school board" constituted an invalid condition as it is not restitution and it is not a fine. Thus it is not punishment that would render the judgment a final conviction and require or allow Division of Motor Vehicle to revoke plaintiff's license. Florence v. Hiatt, 101 N.C. App. 539, 400 S.E.2d 118 (1991).

When Conviction Final. — The conviction alone, without the imposition of a judgment from which an appeal might be taken, is not a final conviction within the terms of subsection (c). Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

A conviction in a criminal case is not final within the meaning of subsection (c) of this section where no judgment is imposed on the verdict, but merely an order is entered continuing prayer for judgment upon payment of costs. Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

Trial Court Is Required to Forward Record of Conviction. — This section requires that the trial courts shall forward to the Department (now Division) a record of the conviction of any person. Tilley v. Garrett, 8 N.C. App. 556, 174 S.E.2d 617 (1970).

But Court Is Not Required to Forward Warrant and Judgment. — This section does not require that the warrant and judgment, or certified copies thereof, shall be forwarded by the trial court. Tilley v. Garrett, 8 N.C. App. 556, 174 S.E.2d 617 (1970).

Forwarding of License as Notice of Revocation. — The surrendering of his license and forwarding of it to the Department (now Division) by the court gives the licensee sufficient notice that his operator's license has been revoked. State v. Teasley, 9 N.C. App. 477, 277 N.C. 459, 176 S.E.2d 838, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

This section designates clerks of court and assistant and deputy clerks of court as agents of the Department (now Division) of Motor Vehicles for receipt of driver's licenses in cases where revocation is required. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Injunction Not Available to Plaintiff Who Could Have Prevented Delay in Start of Revocation Period. — Where the elapse of approximately 15 months between plaintiff's last conviction for reckless driving and the order of revocation was not caused by defendant Commissioner of Motor Vehicles or his Department (now Division), but the delay apparently resulted from the failure of the clerk of the court where plaintiff was last convicted to act promptly in forwarding a record of the conviction to the Department (now Division) of Motor Vehicles, and plaintiff could have prevented any delay in the start of the revocation period by surrendering his license to the clerk and obtaining a receipt therefor at the time of his second conviction, plaintiff was not entitled to injunctive relief. Simpson v. Garrett, 15 N.C. App. 449, 190 S.E.2d 251 (1972).

Failure to Appear at Trial for Driving Under the Influence in Another State. — Motorist who received citation for driving under the influence in South Carolina and then forfeited bond by not appearing in court had his driver's license properly revoked even though no warrant was issued. Sykes v. Hiatt, 98 N.C. App. 688, 391 S.E.2d 834 (1990).

Condition in Order Held Unenforceable. — Where defendant pleaded guilty to driving without license, the condition in judge's order that plaintiff make a contribution to the school board was unenforceable surplusage. It was not restitution because the school board was not an aggrieved party. It was not a fine because it was directed to an entity other than the county for use by the public schools. Florence v. Hiatt, 101 N.C. App. 539, 400 S.E.2d 118 (1991).

Applied in State v. Ball, 255 N.C. 351, 121 S.E.2d 604 (1961); In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975); State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985).

Cited in Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954); Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956).

OPINIONS OF ATTORNEY GENERAL

Surrender of Out-of-State License Not Required. — Upon conviction of a nonresident for a traffic violation for which revocation or suspension of driving privilege is mandatory, the court should not require such nonresident to surrender a driver's license issued him by his state. See opinion of Attorney General to Honorable John S. Gardner, District Court Judge, Sixteenth Judicial District, 40 N.C.A.G. 420 (1969).

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

(1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or

(2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or

(2) demonstrates to the court that he is not the person charged with the offense; or

(3) pays the penalty, fine, or costs ordered by the court; or

(4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c). In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(b1) A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant's appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

(d) To facilitate the prompt return of licenses and to prevent unjustified charges of driving while license revoked, the clerk of court, upon request, must give the person a copy of the notice it sends to the Division to indicate that the person has complied with the conditions of subsection (b) applicable to his case. If the person complies with the condition before the effective date of the revocation, the notice must indicate that the person is eligible to drive if he is otherwise validly licensed.

(e) As used in this section and in G.S. 20-24.2, the word offense includes crimes and infractions created by this Chapter. (1985, c. 764, s. 19; 1985 (Reg. Sess., 1986), c. 852, ss. 4-6, 9, 17; 1987, c. 581, s. 4; 1991, c. 682, s. 4; 1993, c. 313, s. 1; 1995, c. 538, s. 2(d).)

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-24.2. Court to report failure to appear or pay fine, penalty or costs.

(a) The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

(1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or

(2) Fails to pay a fine, penalty, or costs within 20 days of the date specified in the court's judgment.

(b) The reporting requirement of this section and the revocation mandated by G.S. 20-24.1 do not apply to offenses in which an order of forfeiture of a cash bond is entered and reported to the Division pursuant to G.S. 20-24. If an order is sent to the Division by the clerk through clerical mistake or other inadvertence, the clerk's office that sent the report of noncompliance must withdraw the report and send notice to the Division which shall correct its records accordingly. (1985, c. 764, s. 3; 1985 (Reg. Sess., 1986), c. 852, ss. 3, 17; 1987, c. 581, s. 3; 1991, c. 682, s. 5.)

Editor's Note. — This section was formerly G.S. 15A-1117, as enacted by Session Laws 1985, c. 764, s. 3. It was rewritten and recodified as this section by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 3, effective September 1, 1986.

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-25. Right of appeal to court.

Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. Provided, a judge of the district court shall have limited jurisdiction under this section to sign and enter a temporary restraining order only. (1935, c. 52, s. 19; 1975, c. 716, s. 5; 1987, c. 659, s. 1.)

CASE NOTES

Power to Suspend or Revoke Licenses Vested Exclusively in Department (now Division) of Motor Vehicles. — By Session Laws 1941, c. 36 (G.S. 20-1, 20-2, 20-3 and 20-4), the power to suspend or revoke drivers' licenses after July 1, 1941, vested exclusively in the newly created Department (now Division) of Motor Vehicles, subject to the same right of review by the superior court as existed prior to that date. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944).

Section Construed with G.S. 20-23. — This section and G.S. 20-23 must be construed in pari materia. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute. These, under express provisions of this section, include full de novo review by a superior court judge, at the election of the licensee, in all cases except where the suspension or revocation is mandatory. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968).

Provisions Satisfy Requirements of Due Process. — The provisions of G.S. 20-48, together with the provisions of G.S. 20-16(d), relating to the right of review, and the provisions of this section, relating to the right of appeal, satisfy the requirements of procedural due process. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Atwood, 27 N.C. App. 445, 219 S.E.2d 521 (1975), rev'd on other grounds, 290 N.C. 266, 225 S.E.2d 543 (1976).

This section creates no right to appeal a suspension under G.S. 20-4.20(b). The General Assembly simply has not yet provided for appeals from suspension under G.S. 20-4.20(b). Palmer v. Wilkins, 73 N.C. App. 171, 325 S.E.2d 697 (1985).

A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the superior court of Wake County pursuant to former G.S. 150A-45 and may not obtain a hearing under the present section in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

Certiorari to Review Mandatory Suspension. — Petitioner whose driving privilege was mandatorily suspended under G.S. 20-17(2) and G.S. 20-19(e) did not have the right to appeal under this section or under the Administrative Procedure Act, Chapter 150B. However, the superior court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Where petitioner, seeking conditional restoration of his driving privileges, pled sufficient facts to show he did not have right to appeal from final decision of DMV, he could then have petitioned for writ of certiorari to have case reviewed by superior court. Thus, superior court had jurisdiction to review case. Penuel v. Hiatt, 100 N.C. App. 268, 396 S.E.2d 85 (1990).

Discretionary suspensions and revocations of driving licenses by the department (now Division) of Motor Vehicles are reviewable under this section. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944); In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Trial court correctly reviewed the North Carolina Division of Motor Vehicles' cancellation of a driver's conditionally restored driving privileges under a petition for writ of certiorari rather than de novo review because although there was no right to appeal a cancellation or revocation under G.S. 20-25, the driver could seek certiorari pursuant to G.S. 20-19(e). Cole v. Faulkner, 155 N.C. App. 592, 573 S.E.2d 614, 2002 N.C. App. LEXIS 1589 (2002).

Discretionary revocations and suspensions may be reviewed by the court under this section, while mandatory revocations and suspensions may not. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968); Taylor v. Garrett, 7 N.C. App. 473, 173 S.E.2d 31 (1970).

Discretionary revocation of a driver's license is reviewable under the provisions of this section but mandatory revocations are not. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

By Trial De Novo. — All suspensions, cancellations and revocations of driving licenses made in the discretion of the Department (now Division) of Motor Vehicles, whether under G.S. 20-16, 20-23 or any other provision of this Chapter, are reviewable by trial de novo. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

The hearing in the superior court is de novo, and the court is not bound by the findings of fact or the conclusions of law made by the Department (now Division). In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954).

Upon the filing of a petition for review, it is the duty of the judge, after notice to the Department (now Division), "to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this Article." This is more than a review as upon a writ of certiorari. It is a rehearing de novo, and the judge is not bound by the findings of fact or the conclusions of law made by the

Department (now Division). Else why "take testimony," "examine into the facts," and "determine" the question at issue? Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

Any person whose driver's license has been suspended under G.S. 20-16.2(d) has the right to a full de novo review by a superior court judge. This means the court must hear the matter on its merits from beginning to end as if no trial or hearing had been held by the Department (now Division) and without any presumption in favor of its decision. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Section 20-25 creates no right to appeal a revocation under G.S. 20-138.5, since G.S. 20-138.5 appears in Article 3 rather than Article 2. Following a conviction for habitual impaired driving, under that section, permanent revocation is mandatory and the trial court lacks the authority to provide relief. Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512, 2000 N.C. App. LEXIS 496 (2000).

But Mandatory Revocations Under G.S. 20-17 Are Not Reviewable. And no right accrues to a licensee who petitions for a review of the order of the Department (now Division) when it acts under the terms of G.S. 20-17, for then its action is mandatory. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948); Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); Mintz v. Scheidt, 241 N.C. 268, 84 S.E.2d 882 (1954).

There is no right of judicial review when the revocation is mandatory pursuant to the provisions of G.S. 20-17. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969); Rhyne v. Garrett, 18 N.C. App. 565, 197 S.E.2d 235 (1973).

There is no right to appeal to a court where the cancellation of the license is mandatory, and the provisions of G.S. 20-17.8 are mandatory; thus, the district court could not review, under G.S. 20-25, a decision by the Division of Motor Vehicles that decided not to reinstate, without a requisite ignition interlock device, the license of a driver whose license had been suspended for violating G.S. 20-17.8. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

Mandatory Revocation Was Not Reviewable under § 150B-43. — Where revocation issued by Division of Motor Vehicles (DMV) was mandatory, superior court did not have jurisdiction to review order of revocation pursuant to G.S. 150B-43 as licenses issued under Chapter 20 are expressly excluded under G.S. 150B-2. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

The jurisdiction vested by this section is not a delegation of legislative and administrative authority. The review is judicial and is governed by the standards and guides which are applicable to other judicial proceedings. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Such jurisdiction is not the limited, inherent power of courts to review the discretionary acts of an administrative officer. The power is conferred by statute, and the statute must be looked to in order to ascertain the nature and extent of the review contemplated by the legislature. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

The Section Imposes Additional Jurisdiction. — The court has inherent authority to review the discretionary action of an administrative agency whenever such action affects personal or property rights, upon a prima facie showing, by petition for a writ of certiorari, that such agency has acted arbitrarily, capriciously, or in disregard of law. This section dispenses with the necessity of an application for writ of certiorari, provides for direct approach to the courts and enlarges the scope of the hearing. That the legislature had full authority to impose this additional jurisdiction upon the courts is beyond question. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

But no discretionary power is conferred upon the court in reviewing the suspension or revocation of driving licenses, and the court may determine only if, upon the facts, petitioner's license is subject to suspension or revocation under the provisions of the statute. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

On appeal and hearing de novo in the superior court, that court is not vested with discretionary authority. It makes judicial review of the facts, and if it finds that the license of petitioner is in fact and in law subject to suspension or revocation, the order of the Department (now Division) must be affirmed; otherwise not. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963); Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

No discretionary power is conferred upon the court in matters pertaining to the revocation of licenses. If, under the facts found by the judge, the statute requires the suspension or revocation of petitioner's license, the order of the Department (now Division) entered in conformity with the facts found must be affirmed. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

And failure of the section to provide standards for the guidance of the courts does not invalidate it or negate the jurisdiction. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Remedy for Improper Deprivation of License. — If an individual has been improperly deprived of his license by the Department (now Division) of Motor Vehicles due to a mistake of law or fact, his remedy is to apply for a hearing as provided by G.S. 20-16(d), or by application to the superior court as permitted by this section. At a hearing held pursuant to either of these sections, he would be permitted to show that the suspension was erroneous. He could not ignore the quasi-judicial determination made by the Department (now Division). Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960).

Hearing by Division Is Prerequisite to Court Review. — Section 20-16(d) provides for a rehearing by the Department (now Division) of Motor Vehicles upon application of a licensee whose license has been suspended, and this procedure should be followed and should be made to appear in the petition before review by the superior court. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

Errors in Administrative Proceedings Are Rendered Harmless by Hearing De Novo. — If any errors were committed in the administrative proceedings, they are rendered harmless by the hearing de novo on appeal. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Hearing Must Be Sufficiently Formal to Permit Appellate Review. — Although a hearing conducted pursuant to this section may be as informal as the particular judge permits, nevertheless there should be sufficient formality in compiling a record of the proceeding so as to permit an appellate review. Tilley v. Garrett, 8 N.C. App. 556, 174 S.E.2d 617 (1970).

Burden of Proof. — Since the hearing on appeal in the superior court is de novo, if the Department (now Division) has the burden of proof at the first hearing held under G.S. 20-16(d), obviously it also has the burden at the de novo hearing in the superior court. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Plaintiff May Not Complain That Division Has No Valid Warrant and Valid Judgment in Records. — If the plaintiff has been improperly deprived of his license by the Department (now Division) due to a mistake of law or fact, he is entitled to show that the suspension was erroneous; however, he has no ground to complain that the Department (now Division) does not have as a part of its records a "valid warrant" and a "valid judgment." Plaintiff has available to him the records of the court in which he is alleged to have been convicted by which he may show whether the conviction was valid. Tilley v. Garrett, 8 N.C. App. 556, 174 S.E.2d 617 (1970).

Cancellation of Suspension. — Petitioner was arrested in South Carolina, charged with operating a motor vehicle while under the influence of intoxicants. He gave bond for appearance, but no warrant was served on him and no trial had, and his bond was forfeited. His license was suspended by the Department (now Division) of Motor Vehicles upon information of the highway department of South Carolina that he had been found guilty of driving while intoxicated. Upon review the superior court found, in addition, that the suspension was based upon misinformation and further that petitioner in fact was not guilty. It was held that the findings supported the court's order directing the respondent to cancel the suspension and to restore license to petitioner. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

Denial of License on Petition for Reinstatement. — If a petitioner is unlawfully and illegally denied a license upon a hearing on a petition for reinstatement of his license, the judge of the superior court, upon proper allegations in a petition and proper notice to the respondent as provided in this section, is authorized to take testimony, examine the facts of the case, and determine whether the petitioner was illegally and unlawfully denied a license under the provisions of the Uniform Driver's License Act. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

Review of Revocation Based on Conviction of Offense in Another State. — The fact that the Department (now Division) of Motor Vehicles, in the exercise of its discretion, accepted the certification of a conviction in another state at its face value did not foreclose the petitioner's right to review as provided in this section. In other words, the General Assembly has never made it mandatory on the Department (now Division) to suspend or revoke the license of a resident of this State based on the conviction of such person in another state of any offense therein which, if committed in this State, would make the revocation mandatory. Carmichael v. Scheidt, 249 N.C. 472, 106 S.E.2d 685 (1959).

On appeal from a suspension of a resident's license under G.S. 20-23, it is the conviction in another state that is under review in the superior court. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

The superior court of North Carolina may not determine the guilt of a license holder, with respect to offenses alleged to have been committed in another state, as the sole predicate for suspension or revocation of his license. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

Applied in Noyes v. Peters, 40 N.C. App. 763, 253 S.E.2d 584 (1979).

Cited in In re Harris, 37 N.C. App. 590, 246 S.E.2d 532 (1978); Seders v. Powell, 298 N.C. 453, 259 S.E.2d 544 (1979); Gaither v. Peters, 63 N.C. App. 559, 305 S.E.2d 763 (1983); Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984); Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985); In re Vallender, 81 N.C. App. 291, 344 S.E.2d 62 (1986); In re Rogers, 94 N.C. App. 505, 380 S.E.2d 599 (1989); Richardson v. Hiatt, 95 N.C. App. 196, 381 S.E.2d 866 (1989); Ferguson v. Killens, 129 N.C. App. 131, 497 S.E.2d 722 (1998).

§ 20-26. Records; copies furnished; charge.

(a) The Division shall keep a record of all applications for a drivers license, all tests given an applicant for a drivers license, all applications for a drivers license that are denied, all drivers licenses issued, renewed, cancelled, or revoked, all disqualifications, all convictions affecting a drivers license, and all prayers for judgment continued that may lead to a license revocation. When the Division cancels or revokes a commercial drivers license or disqualifies a person, the Division shall update its records to reflect that action within 10 days after the cancellation, revocation, or disqualification becomes effective. When a person who is not a resident of this State is convicted of an offense or commits an act requiring revocation of the person's commercial drivers license or disqualification of the person, the Division shall notify the licensing authority of the person's state of residence.

The Division shall keep records of convictions occurring outside North Carolina for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of alcoholic beverages, and the offenses included in G.S. 20-17. The Division shall also keep records of convictions occurring outside North Carolina for any serious traffic violation that involves a commercial motor vehicle and is not otherwise required to be kept under this subsection.

(b) The Division shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge. A certified copy of a driver's records kept pursuant to subsection (a) may be sent by the Police Information Network. In addition to the uses authorized by G.S. 8-35.1, a copy certified under the authority of this section is admissible as prima facie evidence of the status of the person's license. The Attorney General and the Commissioner of Motor Vehicles are authorized to promulgate such rules and regulations as may be necessary to implement the provision of this subsection.

(b1) The registered or declared weight set forth on the vehicle registration card or a certified copy of the Division record sent by the Division of Criminal Information or otherwise is admissible in any judicial or administrative proceeding and shall be prima facie evidence of the registered or declared weight.

(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

(1) Limited extract copy of license record, for period up to three years	$8.00
(2) Complete extract copy of license record	8.00
(3) Certified true copy of complete license record	11.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund.

(d) The charge for records provided pursuant to this section shall not be subject to the provisions of Chapter 132 of the General Statutes.

(e) In the event of a mistake on the part of any person in ordering license records under subsection (c) of this section, the Commissioner may refund or credit to that person up to sixty-five percent (65%) of the amount paid for the license records.

(f) On and after July 1, 1988, the Division shall expeditiously furnish to insurance agents, insurance companies, and to insurance support organizations as defined in G.S. 58-39-15(12), for the purpose of rating nonfleet private passenger motor vehicle insurance policies, through electronic data processing means or otherwise, copies of or information pertaining to license records that are required to be kept pursuant to subsection (a) of this section. (1935, c. 52, s. 20; 1961, c. 307; 1969, c. 783, s. 3; 1971, c. 486, s. 1; 1975, c. 716, s. 5; 1979, c. 667, s. 23; c. 903, ss. 9, 10; 1981, c. 145, s. 1; c. 412, s. 4; c. 690, s. 13; c. 747, s. 66; 1983, c. 435, s. 20; c. 761, s. 149; 1987, c. 869, s. 16; 1987 (Reg. Sess., 1988), c. 1112, ss. 14, 17; 1989, c. 771, ss. 9, 17, 18; 1991, c. 689, s. 330; c. 726, s. 11; 1997-443, s. 32.25(b); 2005-276, s. 44.1(e).)

CASE NOTES

Failure to Appear at Trial for Driving Under the Influence in Another State. — Motorist who received citation for driving under the influence in South Carolina and then forfeited bond by not appearing in court had his driver's license properly revoked even though no warrant was issued. Sykes v. Hiatt, 98 N.C. App. 688, 391 S.E.2d 834 (1990).

OPINIONS OF ATTORNEY GENERAL

Accidents Are Not Required to Be Shown on Records. — See opinion of Attorney General to Mr. Fred Colquitt, Director, Driver's License Section, Department of Motor Vehicles, 45 N.C.A.G. 218 (1976).

Division May Not Furnish Listings for Commercial Purposes. — The Division of Motor Vehicles is not required or permitted under the statutes to sell or furnish selective listings (i.e., by age, sex, etc.) in bulk or on computer tapes from the driver's license files for commercial purposes. Opinion of Attorney General to Mr. Zeb Hocutt, Jr., Director, Driver License Section, Division of Motor Vehicles, 47 N.C.A.G. 59 (1977).

§ 20-27. Availability of records.

(a) All records of the Division pertaining to application and to drivers' licenses, except the confidential medical report referred to in G.S. 20-7, of the current or previous five years shall be open to public inspection in accordance with G.S. 20-43.1, at any reasonable time during office hours and copies shall be provided pursuant to the provisions of G.S. 20-26.

(b) All records of the Division pertaining to chemical tests as provided in G.S. 20-16.2 shall be available to the courts as provided in G.S. 20-26(b). (1935, c. 52, s. 21; 1975, c. 716, s. 5; 1979, c. 667, s. 24; c. 903, s. 11; 1981, c. 145, s. 2; 1997-443, s. 32.25(c).)

§ 20-27.1. Unlawful for sex offender to drive commercial passenger vehicle or school bus without appropriate commercial license or while disqualified.

A person who drives a commercial passenger vehicle or a school bus and who does not have a valid commercial drivers license with a P or S endorsement because the person was convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is guilty of a Class F felony. (2009-491, s. 4.)

Editor's Note. — Sesion Laws 2009-491, s. 7, provides: "This act becomes effective December 1, 2009. This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009."

§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

(a) Driving While License Revoked. — Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. — A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2)a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. — A person shall be guilty of a Class 1 misdemeanor if:

(1) The person operates a motor vehicle upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

(2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. — A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person

must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time that the conditional restoration is active.

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

(1) The person violates any condition of the restoration.

(2) The person is convicted of any moving offense in this or another state.

(3) The person is convicted for a violation of the alcoholic beverage or controlled substance laws of this or any other state.

(d) Driving While Disqualified. — A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1046; 1959, c. 515; 1967, c. 447; 1973, c. 47, s. 2; cc. 71, 1132; 1975, c. 716, s. 5; 1979, c 377, ss. 1, 2; c. 667, s. 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 51; 1983 (Reg. Sess., 1984), c. 1101, s. 18A; 1989, c. 771, s. 4; 1991, c. 509, s. 2; c. 726, s. 12; 1993, c. 539, ss. 320-322; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, ss. 2, 3; 1995, c. 538, s. 2(e), (f); 2002-159, s. 6; 2006-253, s. 22.1; 2007-493, ss. 4, 19.)

Legal Periodicals. — For survey of 1976 case law on criminal law, see 55 N.C.L. Rev. 976 (1977).

CASE NOTES

I. In General.
II. Procedure.

I. IN GENERAL.

The right to operate a motor vehicle upon the public highways is not an unrestricted right but a privilege which can be exercised only in accordance with the legislative restrictions fixed thereon. State v. Tharrington, 1 N.C. App. 608, 162 S.E.2d 140 (1968).

In this section the General Assembly anticipated there would be hardship cases where the violation of subsection (a) would be technical rather than wilful. Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

Where the petitioner was convicted of violating this section the revocation of his license was mandatory, and the exercise of limited discretion by the division under subsection (a) of this section does not change the mandatory character of the revocation. Noyes v. Peters, 40 N.C. App. 763, 253 S.E.2d 584 (1979).

Suspension or Revocation of License under Subsection (a) Not Proper without Conviction. — Where plaintiff has never been convicted of or tried for the offense defined in subsection (a) of this section, unless and until he is so tried and convicted, subsection (a) vests no authority in the Department (now Division) in respect of the suspension or revocation of his operator's license. Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

Operation Must Have Occurred during Suspension or Revocation. — To constitute a violation of subsection (a) of this section, the operation of a motor vehicle must occur "while such license is suspended or revoked," that is, during the period of suspension or revocation. State v. Sossamon, 259 N.C. 374, 130 S.E.2d 638 (1963).

Subsection (a) of this section deals solely and directly with the offense of driving while one's operator's license is suspended or revoked and contains provisions bearing directly upon periods of suspension and revocation upon conviction. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

One violates this section if he operates a motor vehicle on a public highway while his operator's license is in a state of suspension. State v. Blacknell, 270 N.C. 103, 153 S.E.2d 789 (1967).

To constitute a violation of subsection (a) of this section there must be: (1) operation of a motor vehicle by a person; (2) on a public highway; (3) while his operator's license is suspended or revoked. State v. Cook, 272 N.C. 728, 158 S.E.2d 820 (1968); State v. Hughes, 6 N.C. App. 287, 170 S.E.2d 78 (1969); State v. Springs, 26 N.C. App. 757, 217 S.E.2d 200 (1975).

In order to convict a person of a violation of subsection (a) of this section, such person must have: (1) operated a motor vehicle; (2) on a public highway; and (3) while his operator's license or operating privilege was lawfully suspended or revoked. State v. Newborn, 11 N.C. App. 292, 181 S.E.2d 214 (1971).

In order to constitute a violation of this section, defendant must be found guilty of driving "while" his license is revoked, and a verdict specifically finding defendant guilty of driving "after" his license was revoked is therefore defective. State v. McDonald, 21 N.C. App. 136, 203 S.E.2d 397 (1974).

To convict for a violation of subsection (a) of this section, the State must prove: (1) the operation of a motor vehicle, (2) on a public highway, (3) while one's operator's license is suspended or revoked. State v. Chester, 30 N.C.

App. 224, 226 S.E.2d 524 (1976).

A conviction under subsection (a) of this section requires that the State prove beyond a reasonable doubt (1) the operation of a motor vehicle by a person, (2) on a public highway, (3) while his operator's license is suspended or revoked. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

Offense Must Have Occurred upon Public Highway. — The trial judge's failure to require the jury to find beyond a reasonable doubt that the offense occurred upon a public highway was prejudicial error. State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971); State v. Springs, 26 N.C. App. 757, 217 S.E.2d 200 (1975).

What Term "Highway" Encompasses. — The term "highway" encompasses "highway of the State" or "public highway for purposes of framing a valid arrest warrant." State v. Bigelow, 19 N.C. App. 570, 199 S.E.2d 494 (1973).

Intent Immaterial. — The operation of a motor vehicle upon the highways of the State by a person whose driver's license has been revoked is unlawful, regardless of intent, since the specific performance of the act forbidden constitutes the offense itself. State v. Correll, 232 N.C. 696, 62 S.E.2d 82 (1950).

A person has no right to drive his car upon the highways of North Carolina after his license has been revoked and it makes no difference what the person's intentions are in so doing. State v. Tharrington, 1 N.C. App. 608, 162 S.E.2d 140 (1968); State v. Hurley, 18 N.C. App. 285, 196 S.E.2d 542 (1973).

There is nothing in subsection (a) of this section which would imply that knowledge or intent is a part of the crime of operating a motor vehicle after one's license has been suspended. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Hurley, 18 N.C. App. 285, 196 S.E.2d 542 (1973).

Actual or Constructive Knowledge Required for Conviction. — The legislature intended that there be actual or constructive knowledge of the suspension or revocation in order for there to be a conviction under this section. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

While a specific intent is not an element of the offense of operating a motor vehicle on a public highway while one's license is suspended or revoked, the burden is on the State to prove that defendant had knowledge at the time charged that his operator's license was suspended or revoked. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976).

The surrendering of defendant's license to the trial court, and the forwarding of it to the DMV, gave defendant sufficient notice that his driver's license had been revoked. State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894, cert. denied, 313 N.C. 606, 332 S.E.2d 80 (1985).

Trial court erred in denying defendant's motion to dismiss the charge against him of driving while license revoked, as the state did not present sufficient evidence that defendant knew his license was revoked, in part because the state was unable to show that defendant had been notified of the alleged revocation. State v. Cruz, 173 N.C. App. 689, 620 S.E.2d 251, 2005 N.C. App. LEXIS 2288 (2005).

Exclusion of Evidence of Operability Upheld. — Where defendant admitted that he was sitting behind the wheel of an automobile while the motor was running, that he put the car into drive three times and that the car moved forward on each occasion, failure to allow defendant to introduce evidence that the vehicle he was alleged to have been operating was not operable was not prejudicial and did not entitle him to a new trial for the offenses of habitual impaired driving and driving during revocation, as defendant demonstrated in the presence of a police officer that the car in which he was seated was a device in which a person might be transported for purposes of G.S. 20-4.01(49). State v. Clapp, 135 N.C. App. 52, 519 S.E.2d 90 (1999).

State's Burden of Proof. — To sustain a charge against a defendant for driving while his license was revoked, the State had to prove that he (1) operated a motor vehicle, (2) on a public highway, (3) while his operator's license was suspended or revoked, (4) with knowledge of the suspension or revocation. State v. Woody, 102 N.C. App. 576, 402 S.E.2d 848 (1991).

Requirements of Necessity Defense Not Met. — Regardless of whether the defense of necessity should be recognized in North Carolina, the evidence in defendant's case clearly did not meet the requirements of this defense. State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

Offense by Person Not Holding License. — Under the provisions of G.S. 20-23.1 and subsection (a) of this section, when a person who does not hold a driver's license has his operating privilege revoked or suspended in the manner and under the conditions prescribed by statute, and while such operating privilege is thus suspended or revoked he drives a motor vehicle upon the highways of this State, he violates subsection (a). State v. Newborn, 11 N.C. App. 292, 181 S.E.2d 214 (1971).

Special Arraignment Not Required on Charge of Driving while License Permanently Revoked. — A special arraignment need not be held in order for defendant to be convicted of driving while license permanently revoked. Section 15A-928 applies solely to those charges in which the defendant's prior conviction raises an offense of lower grade to one of higher grade. State v. Wells, 59 N.C. App. 682, 298 S.E.2d 73 (1982).

Maximum term of 18 months and minimum term of 12 months does not exceed statutory maximum for the crime of driving while license permanently revoked. Since only the minimum punishment of not less than one year is specified in subsection (b) of this section, this statute must be read together with G.S. 14-3, applicable to motor vehicle misdemeanors contained in sections other than Article 3 of this Chapter, to find the maximum term of imprisonment. State v. Wells, 59 N.C. App. 682, 298 S.E.2d 73 (1982).

Applied in State v. Meadows, 234 N.C. 657, 68 S.E.2d 406 (1951); Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960); State v. Sossamon, 259 N.C. 378, 130 S.E.2d 640 (1963); State v. Blackwelder, 263 N.C. 96, 138 S.E.2d 787 (1964); State v. Letterlough, 6 N.C. App. 36, 169 S.E.2d 269 (1969); State v. Rowland, 13 N.C. App. 253, 185 S.E.2d 296 (1971); State v. Guffey, 283 N.C. 94, 194 S.E.2d 827 (1973); State v. Toler, 18 N.C. App. 149, 196 S.E.2d 295 (1973); State v. Phillips, 25 N.C. App. 313, 212 S.E.2d 906 (1975); State v. Burbank, 59 N.C. App. 543, 297 S.E.2d 602 (1982); State v. Beasley, 66 N.C. App. 288, 311 S.E.2d 347 (1984); State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985); State v. Cooney, 72 N.C. App. 649, 325 S.E.2d 15 (1985); State v. Carrington, 74 N.C. App. 40, 327 S.E.2d 594 (1985); State v. Cornelius, 104 N.C. App. 583, 410 S.E.2d 504 (1991); State v. Bartlett, 130 N.C. App. 79, 502 S.E.2d 53 (1998).

Cited in State v. Jordan, 155 N.C. App. 146, 574 S.E.2d 166, 2002 N.C. App. LEXIS 1621 (2002); State v. Bowden, 177 N.C. App. 718, 630 S.E.2d 208, 2006 N.C. App. LEXIS 1218 (2006); Hinson v. Jarvis, 190 N.C. App. 607, 660 S.E.2d 604, 2008 N.C. App. LEXIS 990 (2008).

II. PROCEDURE.

A violation of § 20-7 is not statutorily a lesser included offense of this section. State v. Cannon, 38 N.C. App. 322, 248 S.E.2d 65 (1978).

Double Jeopardy Bars Prosecution under This Section Where Defendant Already Pled Guilty to § 20-7. — The defendant could not be prosecuted for driving while his license was permanently revoked in violation of this section because of the prohibition against double jeopardy, where the defendant had previously pled guilty to driving without a license in violation of G.S. 20-7 is not statutorily a lesser included offense of a violation of this section, under the "additional facts test" of double jeopardy when applied to the defendant's offenses, the two offenses were the same both in fact and in law since the evidence that the defendant was driving an automobile while his license had been permanently revoked would sustain a conviction for driving without a license. State v. Cannon, 38 N.C. App. 322, 248 S.E.2d 65 (1978).

A warrant is fatally defective which does not allege in words or in substance an essential element of the offense defined in subsection (a) of this section. State v. Sossamon, 259 N.C. 374, 130 S.E.2d 638 (1963).

Warrant Need Not Specifically Refer to Section. — A warrant charging that the named defendant did unlawfully and willfully operate a motor vehicle on public streets or highways while his license was suspended sufficiently charges defendant's violation of this section without specific reference to the statute. State v. Blacknell, 270 N.C. 103, 153 S.E.2d 789 (1967).

Warrant Need Not Allege That Defendant Was Driving on "Public" Highway. — A warrant for driving while driver's license was suspended is not fatally defective in failing to allege that defendant was driving upon a "public" street or highway, since this section uses the phrase "highways of the State." State v. Martin, 13 N.C. App. 613, 186 S.E.2d 647, cert. denied and appeal dismissed, 281 N.C. 156, 188 S.E.2d 364 (1972).

Indictment Held Sufficient. — Indictments for driving while license revoked and speeding to elude arrest were not made defective by their failure to list all elements of the crime of driving with license revoked, because they gave defendant sufficient notice of the nature and cause of the charges against him. State v. Scott, 167 N.C. App. 783, 607 S.E.2d 10 (2005).

Admissibility of Division Records. — The records of the Department (now Division), properly authenticated, are competent for the purpose of establishing the status of a person's operator's license and driving privilege. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

In a prosecution of a defendant for driving while his license was suspended, a properly certified copy of the driver's license record of defendant on file with the Department (now Division) of Motor Vehicles is admissible as evidence that the defendant's license was in a state of revocation for a period covering the date of the offense for which he was charged. State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970).

Certification by an employee of the Department (now Division) of Motor Vehicles that the original of an order of security requirement or suspension of driving privilege was mailed to defendant on a specified date at his address shown on the records of the Department (now Division) of Motor Vehicles is sufficient to render admissible a copy of the document in a prosecution of a defendant for driving while his license was suspended. State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970).

A defendant is entitled to have the contents of the official record of the status of his driver's license limited, if he so requests, to the formal parts thereof, including the certification and seal, plus the fact that under official action of the Department (now Division) of Motor Vehicles the defendant's license was in a state of revocation or suspension on the date he is charged with committing the offense under this section. State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

Where a defendant failed to request that the contents of his certified driving record be limited to the portions thereof relating to the status of his license on the day he was charged with driving while his license was revoked, he could not complain on appeal that the record indicated that he had been involved in a number of accidents. State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970).

Admission into evidence of defendant's prior convictions for driving while impaired and for hit-and-run did not unfairly prejudice defendant in prosecution for driving while his license was revoked, where defendant admitted driving van while his license was revoked. State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

Admission of evidence concerning defendant's convictions for failure to follow a truck route and improper turning was improper under G.S. 8C-1, Rule 609, but the error was not prejudicial to the defendant in prosecution for driving while his license was revoked, where defendant admitted driving van while his license was revoked. State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

Collateral Attack on Order of Revocation Not Permitted. — Defendant could not, when on trial for the criminal offense of driving while his license was revoked, collaterally attack the record of revocation which did not on its face disclose invalidity. State v. Ball, 255 N.C. 351, 121 S.E.2d 604 (1961).

Burden of Proof and Presumption of Knowledge. — The State satisfies the burden of proving that defendant had knowledge at the time charged that his operator's license was suspended or revoked when, nothing else appearing, it has offered evidence of compliance with the notice requirements of G.S. 20-48 because of the presumption that he received notice and had such knowledge. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976).

Since defendant chose not to present any evidence at trial, the State met its burden of producing substantial evidence on each element of driving while license revoked in G.S. 20-28(a) by offering evidence that the Department of Motor Vehicles had sent defendant 18 notices of the revocation of defendant's license in compliance with G.S. 20-48(a). State v. Coltrane, 188 N.C. App. 498, 656 S.E.2d 322, 2008 N.C. App. LEXIS 194 (2008), review denied, 362 N.C. 476, 666 S.E.2d 760 (2008).

Mailing of Notice under § 20-48 Raises Prima Facie Presumption of Knowledge. — For purposes of a conviction for driving while license is suspended or revoked, mailing of the notice under G.S. 20-48 raises only a prima facie presumption that defendant received the notice and thereby acquired knowledge of the suspension or revocation. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

The failure of the trial court to charge on knowledge of revocation pursuant to this section in support of an aggravated sentence under G.S. 20-141.5 was not erroneous where the State's evidence tended to show that it complied with the provisions for giving notice of revocation or suspension of a driver's license found in G.S. 20-48 and the defendant neither contested that evidence nor offered contrary evidence. State v. Funchess, 141 N.C. App. 302, 540 S.E.2d 435, 2000 N.C. App. LEXIS 1398 (2000).

When Instructions as to Knowledge Required. — In a prosecution for violation of subsection (a) of this section where the evidence for the State discloses that the Division complied with the notice requirements of G.S. 20-48: (1) Where there is no evidence that defendant did not receive the notice mailed by the division, it is not necessary for the trial court to charge on guilty knowledge; (2) Where there is some evidence of failure of defendant to receive the notice or some other evidence sufficient to raise the issue, then the trial court must, in order to comply with G.S. 1-180 (now repealed) and apply the law to the evidence, instruct the jury that guilty knowledge by the defendant is necessary to convict; and (3) Where all the evidence indicates that defendant had no notice or knowledge of the suspension or revocation of license, a nonsuit should be granted. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976); State v. Hayes, 31 N.C. App. 121, 228 S.E.2d 460 (1976).

Failure to Prove That Defendant Had Notice of Revocation. — Where the State offered no evidence that defendant had been notified that his license was revoked and defendant's plea of not guilty required the State to prove beyond a reasonable doubt every element of the offense charged, defendant's conviction for that charge was reversed. State v. Richardson, 96 N.C. App. 270, 385 S.E.2d 194 (1989).

Evidence Sufficient to Prove Defendant Was Operator. — In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under G.S. 20-4.01(25). State v. Turner, 29 N.C. App. 163, 223 S.E.2d 530 (1976).

Harmless Error. — Although the trial court should have submitted the aggravating factor in G.S. 20-179(c)(2), providing that at the time of the offense, defendant was driving while defendant's license was revoked, as defined by G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a), the error was harmless beyond a reasonable doubt. Defendant's driving record, admitted by the State, showed that defendant's driver's license was indefinitely revoked due to an impaired driving conviction and that the license had not been reinstated, which meant that evidence of the aggravating factor was overwhelming and uncontroverted such that a sentence beyond the statutory maximum could be imposed. State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008).

OPINIONS OF ATTORNEY GENERAL

Minimum Punishment Mandatory. — The minimum punishment of imprisonment for one year under subsection (b) of this section is mandatory and may not be suspended. See opinion of Attorney General to Honorable Samuel L. Osborne, District Court Judge, Twenty-Third Judicial District, 50 N.C.A.G. 88 (1981).

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, except a conviction punishable under G.S. 20-28(a1), such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof.

(b) When a driving privilege is subject to revocation under this section, the additional period of revocation shall be as follows:

(1) A first such revocation shall be for one year;
(2) A second such revocation shall be for two years; and
(3) A third or subsequent such revocation shall be permanent.

(c) A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, or a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provision of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) Repealed by Session Laws 1979, c. 378, s. 2. (1965, c. 286; 1969, c. 348; 1971, c. 163; 1973, c. 47, s. 2; 1975, c. 716, s. 5; 1979, c. 378, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1991, c. 509, s. 1; c. 682, s. 6; c. 726, s. 22.1.)

CASE NOTES

It is clear that a violation of any provision of the motor vehicle laws is a basis for denying reinstatement. The statute's application is not limited to motor vehicle laws involving moving violations or those involving highway safety. Evans v. Roberson, 314 N.C. 315, 333 S.E.2d 228 (1985).

Application of Section. — This section does not apply to a conviction of a "motor vehicle moving offense" during the interim between the termination of an original order of revocation and the payment of the fee required by G.S. 20-7(i1). Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

Odometer alteration prohibited by § 20-343 is a violation of the motor vehicle laws of North Carolina as that term is used in subsection (c) of this section. Evans v. Roberson, 314 N.C. 315, 333 S.E.2d 228 (1985).

Effect of Termination of Revocation Period. — When the period of revocation stated in the original order of revocation terminates, the license is no longer "in a state of suspension or revocation" within the meaning of this section. Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

When the period of revocation stated in the original order of revocation terminates, the former holder of the license may not immediately resume driving. Before he may do so the fee required by G.S. 20-7(i1) must be paid. Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

When the period of revocation stated in the original order of revocation terminates, the former holder of the license is simply a person without a valid operator's or chauffeur's license; if, before payment of the fee required by G.S. 20-7(i1), he operates a motor vehicle upon a highway of this State, he is subject to the penalties provided for one who operates a motor vehicle without a valid operator's or chauffeur's license. Ennis v. Garrett, 279 N.C. 612, 184 S.E.2d 246 (1971).

Suspension Due to Insurance Agent's Failure to Give Notice of Insurance. — Where, by error, a licensee's insurance agent failed to furnish the Commissioner notice of the existence of liability insurance on her car and received notification of suspension of her license for lack of liability insurance but she continued to drive, relying on her agent to correct his error, subsequent moving violations during the period of the suspension make revocation for an additional period mandatory under this section even though the suspension would not have been entered if the Commissioner had been properly advised of the existence of liability insurance. Carson v. Godwin, 269 N.C. 744, 153 S.E.2d 473 (1967).

Revocation of Driving Privilege. — When a person's driver's license is suspended or revoked, it is the surrendering of the privilege to drive, not the license card itself, that is of significance. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver's license for 10 days, petitioner's license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. Eibergen v. Killens, 124 N.C. App. 534, 477 S.E.2d 684 (1996).

Former Provisions Construed. — See Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968).

Applied in Taylor v. Garrett, 7 N.C. App. 473, 173 S.E.2d 31 (1970).

§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of "Impaired Driving License Revocation". — The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2).

(a1) Definitions. — As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. — A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving, and:

1. That person's drivers license was revoked as a result of a prior impaired drivers license revocation; or
2. That person did not have a valid drivers license, and did not have liability insurance.

b. If the motor vehicle is again operated by this particular person, and the person is charged with an offense involving impaired driving, then the vehicle is subject to impoundment and forfeiture if (i) the offense occurs while that person's drivers license is revoked, or (ii) the offense occurs while the person has no valid drivers license, and has no liability insurance; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair Market Value. — The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent Owner. — A motor vehicle owner:

a. Who did not know and had no reason to know that (i) the defendant's drivers license was revoked, or (ii) that the defendant did not have a valid drivers license, and that the defendant had no liability insurance; or

b. Who knew that (i) the defendant's drivers license was revoked, or (ii) that the defendant had no valid drivers license, and that the defendant had no liability insurance, but the defendant drove the vehicle without the person's expressed or implied permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle; or

c. Whose vehicle was reported stolen; or

d. Repealed by Session Laws 1999-406, s. 17.

e. Who is in the business of renting vehicles, and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance Company. — Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance Proceeds. — Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. — A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor Vehicle Owner. — A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. — An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

(5) Repealed by Session Laws 1998-182, s. 2.

(6) Registered Owner. — A person in whose name a registration card for a motor vehicle is issued at the time of seizure.

(7) Repealed by Session Laws 1998-182, s. 2.

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture; Impaired Driving and Prior Revocation. — A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.

(2) A separate hearing after conviction of the defendant.

(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an offense involving impaired driving, and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section.

(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No License and No Insurance. — A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.

(2) A separate hearing after conviction of the defendant.

(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an offense involving impaired driving, and: (i) the defendant was driving without a valid drivers license, and (ii) the defendant was not covered by an automobile liability policy.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. — In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. — If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) Forfeiture Hearing. — Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent owner as defined in this section, in which case the trial judge shall order the motor vehicle released to the innocent owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge shall:

(1)a. Authorize the sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or
   b. Order the motor vehicle released to a lienholder pursuant to the provisions of subsection (f) of this section; and
(2)a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and
   b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) Release of Vehicle to Innocent Motor Vehicle Owner. — At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;
(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter or by the laws of the state in which the vehicle is registered; and
(3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.
(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. — At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest has been perfected and appears on the title to the forfeited vehicle;
(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;
(3) The forfeited motor vehicle had not previously been released to the lienholder;
(4) The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and
(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

(g) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(h) Any order issued pursuant to this section authorizing the release of a seized vehicle shall require the payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle. This requirement shall not be waived. (1983, c. 435, s. 21; 1983 (Reg. Sess., 1984), c. 1101, s. 19; 1989 (Reg. Sess., 1990), c. 1024, s. 6; 1997-379, s. 1.1; 1997-456, s. 30; 1998-182, s. 2; 1999-406, ss. 11, 12, 17; 2000-169, s. 28; 2001-362, s. 7; 2006-253, s. 31; 2007-493, ss. 7, 8, 21.)

Editor's Note. — Session Laws 1999-406, s. 18, states that the act does not obligate the General Assembly to appropriate additional funds, and that the act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 417.

CASE NOTES

Harmless Error. — Although the trial court should have submitted the aggravating factor in G.S. 20-179(c)(2), providing that at the time of the offense, defendant was driving while defendant's license was revoked, as defined by G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a), the error was harmless beyond a reasonable doubt. Defendant's driving record, admitted by the State, showed that defendant's driver's license was indefinitely revoked due to an impaired driving conviction and that the license had not been reinstated, which meant that evidence of the aggravating factor was overwhelming and uncontroverted such that a sentence beyond the statutory maximum could be imposed. State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008).

Cited in Old Salem Foreign Car Serv., Inc. v. Webb, 159 N.C. App. 93, 582 S.E.2d 673, 2003 N.C. App. LEXIS 1426 (2003).

§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked or without license and insurance.

(a) Motor Vehicles Subject to Seizure. — A motor vehicle that is driven by a person who is charged with an offense involving impaired driving is subject to seizure if:

(1) At the time of the violation, the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a); or

(2) At the time of the violation:

  a. The person was driving without a valid drivers license, and

  b. The driver was not covered by an automobile liability policy.

For the purposes of this subsection, a person who has a complete defense, pursuant to G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a valid drivers license at the time of the violation.

(b) Duty of Officer. — If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section.

(b1) Written Notification of Impoundment. — Within 48 hours of receipt within regular business hours of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A notice of seizure received outside regular business hours shall be considered to have been received at the start of the next business day. The notification of impoundment shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(b2) Additional Notification to Lienholders. — In addition to providing written notification pursuant to subsection (b1) of this section, within eight hours of receipt within regular business hours of the notice of seizure, the executive agency designated under subsection (b1) of this section shall notify by facsimile any lienholder of record that has provided the executive agency with a designated facsimile number for notification of impoundment. The facsimile notification of impoundment shall state that the vehicle has been seized, state the reason for the seizure, and notify the lienholder of the additional written notification that will be provided pursuant to subsection (b1) of this section. The executive agency shall establish procedures to allow a lienholder to provide one designated facsimile number for notification of impoundment for any vehicle for which the lienholder is a lienholder of record and shall maintain a centralized database of the provided facsimile numbers. The lienholder must provide a facsimile number at which the executive agency may give notification of impoundment at anytime.

(c) Review by Magistrate. — Upon determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear from the defendant if the defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. — An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. — Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is under the constructive possession of the county board of education for the county in which the operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. Absent a statewide or regional contract that provides otherwise, each county board of education may elect to have seized motor vehicles stored on property owned or leased by the county board of education and charge a reasonable fee for storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county board of education may contract with a commercial towing and storage facility or other private entity for the towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than ten dollars ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. — A motor vehicle owner, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a nondefendant motor vehicle owner conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been seized for not less than 24 hours;
(2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.
(3) A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond

under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) Execution of an acknowledgment as described in G.S. 20-28.2(a1);

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. — A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall consider the petition and make a determination as soon as may be feasible. At any proceeding conducted pursuant to this subsection, the clerk is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. If the clerk determines that the petitioner is an innocent owner, the clerk shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). The clerk shall send a copy of the order authorizing or denying release of the vehicle to the district attorney and the attorney for the county board of education. An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. — A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. —

(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

a. Default on the obligation secured by the motor vehicle has occurred;

b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and

e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner.

(2) The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (1)(d) above. A lienholder who refuses to sell, give, or transfer possession of a seized motor vehicle while the motor vehicle is subject to forfeiture, or a forfeited motor vehicle after the forfeiture hearing, to:

a. The defendant;

b. The motor vehicle owner who owned the motor vehicle immediately prior to seizure pending the forfeiture hearing, or to forfeiture after the forfeiture hearing; or

c. Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

(f), (g) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.

(h) Insurance Proceeds. — In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company liable for the damages to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in this section or G.S. 20-28.2 shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. — In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the outstanding towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall be conducted in accordance with the provisions of G.S. 20-28.5(a), and the proceeds of the sale, after the payment of outstanding towing and storage costs or reimbursement of towing and storage costs paid by a person other than the defendant, shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. — At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. — The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. However, the notice requirement under this subsection does not apply to proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(*l*) Payment of Fees Upon Conviction. — If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. — District court trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.
(2) The judge makes a finding of a "compelling reason" for the continuance.
(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party who has not previously been heard on a petition for pretrial release under subsection (e1) or (e3) of this section or any party whose motor vehicle has not been the subject of a forfeiture hearing held pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to subsection (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was released pursuant to subsection (e) of this section pending trial in district court, the release of the motor vehicle continues, and the terms and conditions of the original bond remain the same as those required for the initial release of the motor vehicle under subsection (e) of this section, pending the resolution of the underlying offense involving impaired driving in superior court.

(n) Any order issued pursuant to this section authorizing the release of a seized vehicle shall require the payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle. This requirement shall not be waived. (1997-379, s. 1.2; 1997-456, s. 31; 1998-182, s. 3; 1998-217, s. 62(a)-(c); 2000-169, s. 29; 2001-362, ss. 1, 2, 3, 4, 5, 6; 2001-487, s. 9; 2006-253, s. 32.)

Editor's Note. — The subdivisions in subsection (e3) have been redesignated at the direction of the Revisor of Statutes.

Session Laws 2009-461, ss. 1 and 2, provide: "SECTION 1. Notwithstanding the authority of the Secretary of Crime Control and Public Safety to adopt rules for the maintenance and operation of a Highway Patrol rotation wrecker system, the amendments to 14A NCAC 09H.0321(10), which became effective on July 18, 2008, are void and unenforceable to the extent such amendments:

"(1) Limit submission of initial applications and reapplications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.

"(2) Limit vehicle storage fees to the maximum allowed by G.S. 20-28.3.

"(3) Require that towing and recovery fees be within fifteen percent (15%) of the median price charged within the applicable Highway Patrol Troop.

"Notwithstanding the limitations set out in this section, the Highway Patrol may require that wrecker services, when responding to rotation wrecker calls, charge reasonable fees for services rendered and that any fee charged for rotation services not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions.

"SECTION 2. The Secretary of Crime Control and Public Safety shall adopt amendments to 14A NCAC 09H.0321(10) to conform to the requirements of this act."

CASE NOTES

DWI seizure statutes were deemed constitutional in spite of a "law of the land" challenge, indicating that these statutes have a legitimate objective — keeping impaired drivers and their cars off of the roads — and that the means chosen to further the goals — seizing the cars, even when they belong to people other than the drivers — is directly related to said objective. State v. Chisholm, 135 N.C. App. 578, 521 S.E.2d 487, 1999 N.C. App. LEXIS 1182 (1999).

Cited in Old Salem Foreign Car Serv., Inc. v. Webb, 159 N.C. App. 93, 582 S.E.2d 673, 2003 N.C. App. LEXIS 1426 (2003).

OPINIONS OF ATTORNEY GENERAL

Duty of Local Board of Education. — Whenever a vehicle is towed by a company that is not under statewide or regional contract, the local board of education must retrieve the vehicle and pay the towing and storage charges within 10 days; the fact that the local board of education or the Department of Public Instruction has entered into a statewide or regional contract with another towing company is immaterial. See opinion of Attorney General to David E. Inabinett, Brinkley Walser, P.L.L.C., 2000 N.C. AG LEXIS 2 (1/14/2000).

§ 20-28.4. Release of impounded motor vehicles by judge.

(a) Release Upon Conclusion of Trial. — If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of an offense involving impaired driving due to dismissal or a finding of not guilty; or

(2) The judge at a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and

(3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner conditioned upon payment of towing and storage costs. The court shall not waive the payment of towing and storage costs. The court shall include in its order notice to the owner of the seized motor vehicle still being held, that within 30 days of the date of the court's order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs.

(b) Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes. Notice of the right to a judicial hearing on the validity of the mechanics' lien given to the owner of the motor vehicle in open court in accordance with subsection (a) of this section or delivery to the owner of the vehicle of a copy of the court's order entered in accordance with subsection (a) of this section shall satisfy the notice requirement of G.S. 44A-4(b). (1997-379, s. 1.3; 1998-182, s. 4; 2001-362, s. 8; 2004-128, s. 4.)

§ 20-28.5. Forfeiture of impounded motor vehicle or funds.

(a) Sale. — A motor vehicle ordered forfeited and sold or a seized motor vehicle authorized to be sold pursuant to G.S. 20-28.3(i), shall be sold at a public sale conducted in accordance with the provisions of Article 12 of Chapter 160A of the General Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county board of education or a person acting on its behalf. Notice of sale, including the date, time, location, and manner of sale, shall be given by first-class mail to all motor vehicle owners of the vehicle to be sold at the address shown by the records of the Division. Written notice of sale shall also be given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 10 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf.

(b) Proceeds of Sale. — Proceeds of any sale conducted under this section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3), shall first be applied to the cost of sale and then to satisfy towing and storage costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. — A board of education may, at its option, retain any forfeited motor vehicle for its use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by a board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

(d) Repealed by Session Laws 1998-182, s. 5, effective December 1, 1998.

(e) Order of Forfeiture; Appeals. — An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals. (1997-379, s. 1.4; 1998-182, s. 5; 1998-217, s. 62(d); 1999-456, s. 11.)

CASE NOTES

Cited in Old Salem Foreign Car Serv., Inc. v. Webb, 159 N.C. App. 93, 582 S.E.2d 673, 2003 N.C. App. LEXIS 1426 (2003).

§ 20-28.6: Repealed by Session Laws 1998-182, s. 6, effective December 1, 1998, and applicable to offenses committed, contracts entered, and motor vehicles seized on or after that date.

§ 20-28.7. Responsibility of Division of Motor Vehicles.

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, and 20-28.5. (1997-379, s. 1.6; 1998-182, s. 7.)

§ 20-28.8. Reports to the Division.

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgment as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known. (1998-182, s. 8.)

§ 20-28.9. Authority for the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars ($10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar ($10.00) administrative fee from a person to whom a seized vehicle is released at the time the motor vehicle is released and shall collect a ten dollar ($10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund. (1998-182, s. 8.)

§ 20-29. Surrender of license.

Any person operating or in charge of a motor vehicle, when requested by an officer in uniform, or, in the event of accident in which the vehicle which he is operating or in charge of shall be involved, when requested by any other person, who shall refuse to write his name for the purpose of identification or to give his name and address and the name and address of the owner of such vehicle, or who shall give a false name or address, or who shall refuse, on demand of such officer or such other person, to produce his license and exhibit same to such officer or such other person for the purpose of examination, or who shall refuse to surrender his license on demand of the Division, or fail to produce same when requested by a court of this State, shall be guilty of a Class 2 misdemeanor. Pickup notices for drivers' licenses or revocation or suspension of license notices and orders or demands issued by the Division for the surrender of such licenses may be served and executed by patrolmen or other peace officers or may be served in accordance with G.S. 20-48. Patrolmen and peace officers, while serving and executing such notices, orders and demands, shall have all the power and authority possessed by peace officers when serving the executing warrants charging violations of the criminal laws of the

State. (1935, c. 52, s. 23; 1949, c. 583, s. 7; 1975, c. 716, s. 5; 1979, c. 667, s. 25; 1981, c. 938, s. 1; 1993, c. 539, s. 323; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Stop of Defendant in Private Driveway Is "Seizure" within U.S. Const., Amend. XIV. — Where a patrolman, while not engaged in any patrol of the highway for purposes of observing traffic or making random license checks, spontaneously decided to stop petitioner, not while petitioner was "on a public highway" nor while petitioner was operating a vehicle, but instead while petitioner was in a private driveway, although petitioner would have had a meritorious defense to any prosecution based on failure to display his license, he was not entitled to invoke self-help against what was, at the time, an arguable lawful arrest, and petitioner's conviction for assaulting the highway patrolman can survive despite the finding that the officer's initial stop and demand were illegal as an unreasonable search and seizure under U.S. Const., Amend. XIV. Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

Sufficiency of Warrant. — A warrant under this section was fatally defective where it failed to aver that defendant refused to exhibit his license upon request while operating or in charge of a motor vehicle. The warrant should also have named the officer who demanded the right to inspect the license. State v. Danziger, 245 N.C. 406, 95 S.E.2d 862 (1957).

Refusal to Display License. — Refusal of defendant, who hit another car with his vehicle in dentist's offstreet parking area, to display his license when requested clearly violated this section. State v. Adams, 88 N.C. App. 139, 362 S.E.2d 789 (1987).

Applied in State v. Clark, 21 N.C. App. 35, 203 S.E.2d 103 (1974); State v. Keziah, 24 N.C. App. 298, 210 S.E.2d 436 (1974); State v. Cornelius, 104 N.C. App. 583, 410 S.E.2d 504 (1991).

Cited in State v. Greenwood, 47 N.C. App. 731, 268 S.E.2d 835 (1980); State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991); State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994); State v. Phillips, 152 N.C. App. 679, 568 S.E.2d 300, 2002 N.C. App. LEXIS 975 (2002).

§ 20-29.1. Commissioner may require reexamination; issuance of limited or restricted licenses.

The Commissioner of Motor Vehicles, having good and sufficient cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may, upon written notice of at least five days to such licensee, require him to submit to a reexamination to determine his competency to operate a motor vehicle. Upon the conclusion of such examination, the Commissioner shall take such action as may be appropriate, and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions or upon failure of such reexamination may cancel the license of such person until he passes a reexamination. Refusal or neglect of the licensee to submit to such reexamination shall be grounds for the cancellation of the license of the person failing to be reexamined, and the license so canceled shall remain canceled until such person satisfactorily complies with the reexamination requirements of the Commissioner. The Commissioner may, in his discretion and upon the written application of any person qualified to receive a driver's license, issue to such person a driver's license restricting or limiting the licensee to the operation of a single prescribed motor vehicle or to the operation of a particular class or type of motor vehicle. Such a limitation or restriction shall be noted on the face of the license, and it shall be unlawful for the holder of such limited or restricted license to operate any motor vehicle or class of motor vehicle not specified by such restricted or limited license, and the operation by such licensee of motor vehicles not specified by such license shall be deemed the equivalent of operating a motor vehicle without any driver's license. Any such restricted or limited licensee may at any time surrender such restricted or limited license and apply for and receive an unrestricted driver's license upon meeting the requirements therefor. (1943, c. 787, s. 2; 1949, c. 1121; 1971, c. 546; 1979, c. 667, ss. 26, 41.)

CASE NOTES

Notice of Suspension Required. — A requirement for notice is made by G.S. 20-16(d) in all cases in which a license is suspended under the authority of that section. Even though a similar requirement for notice does not appear in this section, a reading of this Chapter, in which both sections appear, makes it clear that the legislature intended that notice be given to the licensee when the Commissioner suspends a license under this section as well as when suspension is made under the authority of G.S. 20-16. State v. Hughes, 6 N.C. App. 287, 170 S.E.2d 78 (1969).

In any case in which a license is suspended under the authority of this section, the Commissioner of Motor Vehicles is required to notify the licensee of such suspension. That such notice is required is made more apparent when it is realized that even a failure to pass a reexamination conducted under this section does not necessarily result in suspension of the license. State v. Hughes, 6 N.C. App. 287, 170 S.E.2d 78 (1969).

§ 20-30. Violations of license or learner's permit provisions.

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. Any person violating the provisions of this subdivision shall be guilty of a class I misdemeanor.

(6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the Commissioner. It shall be lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is

subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony. Any person violating the provisions of this subdivision shall be guilty of a Class I felony. (1935, c. 52, s. 24; 1951, c. 542, s. 4; 1967, c. 1098, s. 1; 1973, c. 18, s. 2; 1975, c. 716, s. 5; 1979, c. 415; c. 667, ss. 27, 41; 1979, 2nd Sess., c. 1316, s. 22; 1989, c. 771, s. 8; 1991, c. 726, s. 13; 1991 (Reg. Sess., 1992), c. 1007, s. 29; 1993, c. 539, s. 1247; 1994, Ex. Sess., c. 24, s. 14(c); 1999-299, s. 1; 2001-461, s. 1.1; 2001-487, s. 50(b).)

CASE NOTES

The offense described in § 20-30(5) is not a lesser included offense of § 20-31 dealing with perjury. State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894, cert. denied, 313 N.C. 606, 332 S.E.2d 80 (1985).

Applied in State v. Hayes, 31 N.C. App. 121, 228 S.E.2d 460 (1976).

§ 20-31. Making false affidavits perjury.

Any person who shall make any false affidavit, or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this Article to be sworn to or affirmed shall be guilty of a Class I felony. (1935, c. 52, s. 25; 1993, c. 539, s. 1249; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

The offense described in § 20-30(5) is not a lesser included offense of this section. State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894, cert. denied, 313 N.C. 606, 332 S.E.2d 80 (1985).

§ 20-32. Unlawful to permit unlicensed minor to drive motor vehicle.

It shall be unlawful for any person to cause or knowingly permit any minor under the age of 18 years to drive a motor vehicle upon a highway as an operator, unless such minor shall have first obtained a license to so drive a motor vehicle under the provisions of this Article. (1935, c. 52, s. 26; 1973, c. 684.)

CASE NOTES

Editor's Note. *— Most of the cases treated below were decided under a corresponding provision of an earlier law.*

Violation of Age Limit as Negligence. — Where a person within the age prohibited by the statute runs an automobile upon and injures a pedestrian, the violation of the statute is negligence per se, and a charge by the court that it is a circumstance from which the jury could infer negligence is reversible error. Taylor v. Stewart, 172 N.C. 203, 90 S.E. 134 (1916).

Liability for Injuries. — While it is negligence per se for one within the prohibited age to run an automobile, it is necessary that such negligence proximately cause the injury for damages to be recovered on that account, with the burden of proof on the plaintiff to show it by the preponderance of the evidence. Taylor v. Stewart, 172 N.C. 203, 90 S.E. 134 (1916).

Permitting Operation of Car by Person under Legal Age Is Negligence Per Se. — Under this section it is negligence per se for the owner of a car or one having it under his control to permit a person under legal age to operate it, but such negligence must be proximate cause of injury in order to be actionable. Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946).

Liability of Owner for Torts of Driver. — See Cates v. Hall, 171 N.C. 360, 88 S.E. 524 (1916); Williams v. May, 173 N.C. 78, 91 S.E. 604 (1917); Wilson v. Polk, 175 N.C. 490, 95 S.E. 849 (1918). For a complete treatment, see 2 N.C.L. Rev. 181 (1924).

Liability of Father Where Driver Is Minor Son. — While ordinarily a father is not held responsible in damages for the negligent acts of his minor son done without his knowledge and consent, such may be inferred, as where the father constantly permitted his 13-year-old son to run his automobile. Taylor v. Stewart, 172 N.C. 203, 90 S.E. 134 (1916). See Clark v. Sweaney, 176 N.C. 529, 97 S.E. 474 (1918). See also 2 N.C.L. Rev. 181 (1924).

Question for Jury. — It was for the jury to determine whether a competent and careful chauffeur of more mature years could have avoided the injury under the circumstances, or whether the accident was due to the fact that a lad within the prohibited age was running the vehicle at the time. Taylor v. Stewart, 172 N.C. 203, 90 S.E. 134 (1916).

Instruction. — An instruction to the effect that it would be negligence per se for defendant to permit his child under the legal driving age to operate his automobile but that defendant could not be held liable unless the jury found from the preponderance of the evidence that such negligence was the proximate or one of the proximate causes of the injury, was held sufficient to cover this aspect of the case. Hoke v. Atlantic Greyhound Corp., 227 N.C. 412, 42 S.E.2d 593 (1947).

§ **20-33:** Repealed by Session Laws 1979, c. 667, s. 28.

§ 20-34. Unlawful to permit violations of this Article.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven by any person who has no legal right to do so or in violation of any of the provisions of this Article. (1935, c. 52, s. 28.)

CASE NOTES

Under this section, there is no distinction in meaning between the words "authorize" and "permit"; either action would constitute a violation of this section. Thompson v. Three Guys Furn. Co., 122 N.C. App. 340, 469 S.E.2d 583 (1996).

No Duty to Inquire Further into Driving Credentials. — Grant of summary judgment in favor of the rental company in the administratrix's wrongful death and survival action was appropriate under G.S. 20-34 where the driver presented the rental company with an unexpired New Jersey driver's license and the rental company had no duty to inquire further into the driver's driving credentials. Cowan v. Jack, 922 So. 2d 559, 2005 La. App. LEXIS 2885 (Dec. 21, 2005).

§ 20-34.1. Violations for wrongful issuance of a drivers license or a special identification card.

(a) An employee of the Division or of an agent of the Division who does any of the following commits a Class I felony:

(1) Charges or accepts any money or other thing of value, except the required fee, for the issuance of a drivers license or a special identification card.

(2) Knowing it is false, accepts false proof of identification submitted for a drivers license or a special identification card.

(3) Knowing it is false, enters false information concerning a drivers license or a special identification card in the records of the Division.

(b) Defenses Precluded. — The fact that the Division does not issue a license or a special identification card after an employee or an agent of the Division charges or accepts money or another thing of value for its issuance is not a defense to a criminal action under this section. It is not a defense to a criminal action under this section to show that the person who received or was intended to receive the license or special identification card was eligible for it.

(c) Dismissal. — An employee of the Division who violates this section shall be dismissed from employment and may not hold any public office or public employment in this State for five years after the violation. If a person who violates this section is an employee of the agent of the Division, the Division shall cancel the contract of the agent unless the agent dismisses that person. A person dismissed by an agent because of a violation of this section may not hold any public office or public employment in this State for five years after the violation. (1951, c. 211; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1993, c. 533, s. 8; c. 539, s. 1250; 1994, Ex. Sess., c. 14, s. 30; c. 24, s. 14(c).)

§ 20-35. Penalties for violating Article; defense to driving without a license.

(a) Penalty. — A violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4.

(c) Defenses. — A person may not be convicted of failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted of driving a motor vehicle without a regular drivers license if, when tried for that offense, the person shows all the following:

(1) That, at the time of the offense, the person had an expired license.
(2) The person renewed the expired license within 30 days after it expired and now has a drivers license.
(3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense. (1935, c. 52, s. 29; 1991, c. 726, s. 14; 1993, c. 539, s. 324; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 4.)

Cross References. — As to jurisdiction of prosecution under this section, see notes to G.S. 7A-271 and 7A-272.

CASE NOTES

This section and § 20-7, being in pari materia, must be construed together, and, if possible, they must be reconciled and harmonized. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Excessive Penalty. — Any person convicted of operating a motor vehicle over any highway in this State without having first been licensed as such operator, in violation of G.S. 20-7(a), was guilty of a misdemeanor, and, under former G.S. 20-7(o) and former subsection (b) of this section, was subject to punishment by imprisonment for a term of not more than six months. The superior court, even if it had jurisdiction in other respects, had no authority to pronounce judgment imposing a prison sentence of two years for this criminal offense. State v. Wall, 271 N.C. 675, 157 S.E.2d 363 (1967).

Cited in Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946); State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994); Hinson v. Jarvis, 190 N.C. App. 607, 660 S.E.2d 604, 2008 N.C. App. LEXIS 990 (2008).

§ 20-36. (Effective until March 31, 2010) Ten-year-old convictions not considered.

Except for offenses occurring in a commercial motor vehicle, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction. (1971, c. 15; 1975, c. 716, s. 5; 1998-182, s. 22; 2005-349, s. 7.)

Section Set Out Twice. — The section above is effective until March 31, 2010. For the section as amended March 31, 2010, see the following section, also numbered G.S. 20-36.

§ 20-36. (Effective March 31, 2010) Ten-year-old convictions not considered.

Except for offenses occurring in a commercial motor vehicle, offenses by the holder of a commercial drivers license involving a noncommercial motor vehicle, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction. (1971, c. 15; 1975, c. 716, s. 5; 1998-182, s. 22; 2005-349, s. 7; 2009-416, s. 4.)

Section Set Out Twice. — The section above is effective March 31, 2010. For the section as in effect until March 31, 2010, see the preceding section, also numbered G.S. 20-36.

Effect of Amendments. — Session Laws 2009-416, s. 4, effective March 31, 2010, and applicable to offenses committed on or after that date, inserted "offenses by the holder of a commercial drivers license involving a noncommercial motor vehicle."

OPINIONS OF ATTORNEY GENERAL

Ten-Year Limitation Applicable to Division of Motor Vehicle Action Only. — See opinion of Attorney General to Honorable Robert A. Collier, Jr., 41 N.C.A.G. 322 (1971).

§ 20-37. Limitations on issuance of licenses.

There shall be no driver's license issued within this State other than that provided for in this Article, nor shall there be any other examination required: Provided, however, that cities and towns shall have the power to license, regulate and control drivers and operators of taxicabs within the city or town limits and to regulate and control operators of taxicabs operating between the city or town to points, not incorporated, within a radius of five miles of said city or town. (1935, c. 52, s. 34; 1943, c. 639, s. 2; 1979, c. 667, s. 41.)

Legal Periodicals. — For comment on the 1943 amendment to this section, see 21 N.C.L. Rev. 358 (1943).

CASE NOTES

Authority to License and Regulate Taxicabs. — In adopting this section the General Assembly delegated the authority to license taxicabs and regulate their use on public streets to the several municipalities. Suddreth v. City of Charlotte, 223 N.C. 630, 27 S.E.2d 650 (1943).

In the exercise of this delegated power, it is the duty of the municipal authorities in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when in the exercise of such discretion an ordinance is adopted, it is presumed to be valid; and, the courts will not declare it invalid unless it is clearly shown to be so. State v. Stallings, 230 N.C. 252, 52 S.E.2d 901 (1949).

Under such delegated power a city may require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab or other insignia while operating a taxicab, to show that he is a duly licensed taxicab driver. State v. Stallings, 230 N.C. 252, 52 S.E.2d 901 (1949).

Cited in Victory Cab Co. v. City of Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951); Morrisey v. Crabtree, 143 F. Supp. 105 (M.D.N.C. 1956).

§ 20-37.01. Drivers License Technology Fund.

The Drivers License Technology Fund is established in the Department of Transportation as a nonreverting, interest-bearing special revenue account. The revenue in the Fund at the end of a fiscal year does not revert, and earnings on the Fund shall be credited to the Fund annually. All money collected by the Commissioner pursuant to G.S. 20-37.02 shall be remitted to the State Treasurer and held in the Fund. Money held in the Fund shall be used to supplement funds otherwise available to the Division for information technology and office automation needs. The Commissioner shall report by February 1 and August 1 of each year to the Joint Legislative Commission on Governmental Operations, the chairs of the Senate and House of Representatives Appropriation Committees, and the chairs of the Senate and House of Representatives Appropriations Subcommittees on Transportation on all money collected and deposited in the Fund and on the proposed expenditure of funds collected during the preceding six months. (2001-461, s. 4; 2001-487, s. 42(c).)

Editor's Note. — Session Laws 2001-461, s. 6, also provides: "The electronic system to be established pursuant to Section 4 of this act [which enacted G.S. 20-37.01 and 20-37.02] shall not be operated by the Commissioner until such time as the Drivers License Technology Fund contains sufficient funds to meet the purposes of Section 4 of this act and only for so long as adequate funds are available to operate the electronic system."

§ 20-37.02. Verification of drivers license information.

(a) The Commissioner shall establish and operate an electronic system that can be used to verify drivers licenses and identification cards issued by the Division and the dates of birth on these documents in order to facilitate access to drivers license information by retailers and persons holding ABC permits to prevent the utilization of fictitious identification for the purpose of underage purchases of certain age-restricted products or to commit certain crimes.

(b) The electronic system established and operated by the Commissioner pursuant to subsection (a) of this section shall allow a retailer, as defined in G.S. 105-164.3(14), a person who holds an ABC permit, as defined in G.S. 18B-101(2), or an agent of the retailer or a person holding an ABC permit, to verify the validity of a drivers license or identification card issued by the Division and the date of birth of the person issued the drivers license or identification card. The Commissioner shall make drivers license and identification card information available in a read-only format, and the information to be made available shall not exceed the information contained on the face of the drivers license. The Division shall not keep a record of the inquiry. The retailer or a person holding an ABC permit may retain such information as is necessary to provide evidence that the person's drivers license or identification card was validated or that the person's age was verified. A retailer or permittee shall agree to comply with the requirements of this section prior to using the system.

(c) Except for purposes allowed in this section, a person using the electronic system established in accordance with subsection (a) of this section shall not collect or retain any information obtained through the use of the electronic system, nor transfer or make accessible to a third party any information obtained through an inquiry permitted under this section. A violation of the provisions of this subsection shall be punished as a Class 2 misdemeanor.

(d) A retailer or permittee using the electronic system established pursuant to this section shall be responsible for the costs of the equipment and communication lines approved by the Division needed by the retailer or permittee to access the system.

(e) The establishment and operation of an electronic system pursuant to this section may be funded through grants received from the State, the federal government, a private entity, or any other funding source made available to the Drivers License Technology Fund. All funds obtained through grants to the Fund shall be remitted to the State Treasurer to be held in the Drivers License Technology Fund established in G.S. 20-37.01. (2001-461, s. 4.)

Editor's Note. — Session Laws 2001-461, s. 6, also provides: "The electronic system to be established pursuant to Section 4 of this act [which enacted G.S. 20-37.01 and 20-37.02] shall not be operated by the Commissioner until such time as the Drivers License Technology Fund contains sufficient funds to meet the purposes of Section 4 of this act and only for so long as adequate funds are available to operate the electronic system."

The reference in subsection (b) to G.S. 105-164.3(14) should now refer to G.S. 105-164.3(35). See editor's note at G.S. 105-164.3 regarding Session Laws 2001-476, s. 18(c), which authorized the renumbering of the definitions in that section to maintain their alphabetical order.

ARTICLE 2A.

Afflicted, Disabled or Handicapped Persons.

§ **20-37.1:** Repealed by Session Laws 1989, c. 157, s. 1.

§§ **20-37.2 through 20-37.4:** Repealed by Session Laws 1991, c. 411, s. 5.

§ 20-37.5. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) "Distinguishing license plate" means a license plate that displays the International Symbol of Access using the same color, size of plate, and size of letters or numbers as a regular plate.

(2) "Handicapped" shall mean a person with a mobility impairment who, as determined by a licensed physician:
  a. Cannot walk 200 feet without stopping to rest;
  b. Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;

c. Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume of one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
d. Uses portable oxygen;
e. Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association;
f. Is severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition; or
g. Is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential, as certified by a licensed ophthalmologist, optometrist, or the Division of Services for the Blind.

(3) "International Symbol of Access" means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(4) "Removable windshield placard" means a two-sided, hooked placard which includes on each side:
a. The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;
b. An identification number;
c. An expiration date that is visible from at least 20 feet and the month and year of expiration; and
d. The seal or other identification of the issuing authority. (1967, c. 296, s. 5; 1977, c. 340, s. 1; 1991, c. 411, s. 1; 2009-493, s. 1.)

Effect of Amendments. — Session Laws 2009-493, s. 1, effective January 1, 2010, and applicable to placards that are issued or renewed on or after that date, inserted "that is visible from at least 20 feet and the month and year of expiration" in subdivision (4)c.

CASE NOTES

Cited in Brown v. North Carolina DMV, 987 F. Supp. 451 (E.D.N.C. 1997).

§ 20-37.6. Parking privileges for handicapped drivers and passengers.

(a) General Parking. — Any vehicle that is driven by or is transporting a person who is handicapped and that displays a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated as restricted to vehicles driven by or transporting the handicapped.

(b) Handicapped Car Owners; Distinguishing License Plates. — If the handicapped person is a registered owner of a vehicle, the owner may apply for and display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive one removable windshield placard.

(c) Handicapped Drivers and Passengers; Distinguishing Placards. — Handicapped Drivers and Passengers; Distinguishing Placards. — A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars ($5.00) per placard. The Division shall issue a placard registration card with each placard issued to a handicapped person. The registration card shall bear the name of the person to whom the placard is issued, the person's address, the placard number, and an expiration date. The registration card shall be in the vehicle in which the placard is being used, and the person to whom the placard is issued shall be the operator or a passenger in the vehicle in which the placard is displayed.

(c1) Application and Renewal; Physician's Certification. — The initial application for a distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, or optometrist or of the Division of Services for the Blind that the applicant is handicapped. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant is handicapped. Removable windshield placards shall be renewed every five years, and the renewal shall require a medical recertification that the person is handicapped. Temporary removable windshield placards shall expire no later than six months after issuance.

(c2) Existing Placards; Expiration; Exchange for New Placards.— All existing placards shall expire on January 1, 1992. No person shall be convicted of parking in violation of this Article by reason of an expired placard if the defendant produces in court, at the time of trial on the illegal parking charge, an expired placard and a renewed placard issued within 30 days of the expiration date of the expired placard and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. Existing placards issued on or after July 1, 1989, may be exchanged without charge for the new placards.

(c3) It shall be unlawful to sell a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard issued pursuant to this section. A violation of this subsection shall be a Class 2 misdemeanor and may be punished pursuant to G.S. 20-176(c) and (c1).

(d) Designation of Parking Spaces. — Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in the space in violation of the law.

(d1) Repealed by Session Laws 1991, c. 530, s. 4.

(e) Enforcement of Handicapped Parking Privileges. — It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons when the vehicle does not display the distinguishing license plate, removable windshield placard, or temporary removable windshield placard as provided in this section, or a disabled veteran registration plate issued under G.S. 20-79.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, removable windshield placard, or temporary removable windshield placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas.

(f) Penalties for Violation. —

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least one hundred dollars ($100.00) but not more than two hundred fifty dollars ($250.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least one hundred dollars ($100.00) but not more than two hundred fifty dollars ($250.00) and whenever evidence shall be presented in any court of the fact that a nonconforming sign is being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where the nonconforming sign is located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter 74E of the General Statutes, or a campus police officer commissioned by the Attorney General under Chapter 74G of the General Statutes, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any

motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies. (1971, c. 374, s. 1; 1973, cc. 126, 1384; 1977, c. 340, s. 2; 1979, c. 632; 1981, c. 682, s. 7; 1983, c. 326, ss. 1, 2; 1985, c. 249; c. 586; c. 764, s. 24; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 843; 1989, c. 760, s. 3; 1989 (Reg. Sess., 1990), c. 1052, ss. 1-3.1; 1991, c. 411, s. 2; c. 530, s. 4; c. 672, s. 5; c. 726, s. 23; c. 761, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 30; c. 1043, s. 4; 1993, c. 373, s. 1; 1994, Ex. Sess., c. 14, s. 31; 1999-265, s. 1; 2005-231, s. 11; 2009-493, s. 2.)

Local Modification. — City of Charlotte: 2001-88; city of Jacksonville: 1987 (Reg. Sess., 1988), c. 997.

Effect of Amendments. — Session Laws 2009-493, s. 2, effective January 1, 2010, and applicable to placards that are issued or renewed on or after that date, added the last three sentences in subsection (c).

CASE NOTES

Placard Fee. — Where plaintiffs charged that the fee for a handicapped placard violated their rights under the Americans With Disabilities Act and filed an action for declaratory judgment, the action was barred by the 11th Amendment to the Federal Constitution. Brown v. North Carolina DMV, 987 F. Supp. 451 (E.D.N.C. 1997), aff'd, 166 F.3d 698 (4th Cir. 1999).

Cited in Brown v. North Carolina DMV, 166 F.3d 698 (4th Cir. 1999).

§ 20-37.6A. Parking privileges for out-of-state handicapped drivers and passengers.

Any vehicle displaying an out-of-State handicapped license plate, placard, or other evidence of handicap issued by the appropriate authority of the appropriate jurisdiction may park in any space reserved for the handicapped pursuant to G.S. 20-37.6. (1981, c. 48; 1991, c. 411, s. 3; 1991 (Reg. Sess., 1992), c. 1007, s. 31.)

ARTICLE 2B.

Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card.

(a) Eligibility. — A person who is a resident of this State is eligible for a special identification card.

(b) Application. — To obtain a special identification card from the Division, a person must complete the application form used to obtain a drivers license.

(b1) Search National Sex Offender Public Registry. — The Division shall not issue a special identification card to an applicant who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special

identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8, and the Division shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a special identification card by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction, and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a special identification card under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-37.8.

(c) Format. — A special identification card shall be similar in size, shape, and design to a drivers license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle. A special identification card issued to an applicant must have the same background color that a drivers license issued to the applicant would have.

(d) Expiration and Fee. — A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, is homeless, or who has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

(e) Offense. — Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a Class 2 misdemeanor.

(f) Records. — The Division shall maintain a record of all recipients of a special identification card.

(g) No State Liability. — The fact of issuance of a special identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.

(h) Advertising. — The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5; 1979, c. 469, c. 667, s. 30; 1981, c. 673, ss. 1, 2; c. 690, s. 12; 1981 (Reg. Sess., 1982), c. 1257, s. 3; 1983, c. 443, s. 2; 1983 (Reg. Sess., 1984), c. 1062, s. 7; 1985, c. 141, s. 5; 1991, c. 689, s. 328; 1993, c. 368, s. 3; c. 490, ss. 1, 2; c. 539, s. 325; c. 553, s. 77; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 750, s. 2; 2006-247, s. 19(d); 2009-493, s. 3.)

Editor's Note. — Session Laws 1985, c. 141, s. 6 provides that the amendment thereby is effective September 1, 1986. Section 6 further provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4 and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4 and 5 shall revert to the form they would have without the amendments made by these sections.

Effect of Amendments. — Session Laws 2009-493, s. 3, effective August 26, 2009, added "or who has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease" at the end of the second sentence in the second paragraph of subsection (d).

CASE NOTES

Liability of State for Negligent Issuance. — Where plaintiff suffered personal injury proximately caused by a Division of Motor Vehicles employee who in the course of his employment issued a special identification card in plaintiff's name to another person, this section did not prohibit an action against the State for misuse of a special identification card issued by the State; the legislature by the enactment of this section did not contemplate that the State would escape liability if a special identification card was negligently issued. Talbot v. North Carolina Dep't of Transp., 95 N.C. App. 446, 382 S.E.2d 447 (1989).

Cited in State v. Fair, 77 N.C. App. 681, 335 S.E.2d 783 (1985).

§ 20-37.8. Fraudulent use prohibited.

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in the commission or attempted commission of a felony.

(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class I felony. (1979, c. 603, s. 1; 1993, c. 539, s. 326; 1994, Ex. Sess., c. 24, s. 14(c); 1999-299, s. 2.)

§ 20-37.9. Notice of change of address or name.

(a) Address. — A person whose address changes from the address stated on a special identification card must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a new special identification card within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. — A person whose name changes from the name stated on a special identification card must notify the Division of the change within 60 days after the change occurs and obtain a new special identification card stating the new name.

(c) Fee. — G.S. 20-37.7 sets the fee for a special identification card. (1981, c. 521, s. 2; 1991, c. 689, s. 329; 1997-122, s. 6.)

ARTICLE 2C.

Commercial Driver License.

§ 20-37.10. Title of Article.

This Article may be cited as the Commercial Driver License Act. (1989, c. 771, s. 2.)

§ 20-37.11. Purpose.

The purpose of this Article is to implement the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. Chapter 36, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

(1) Permitting commercial drivers to hold one license;
(2) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses; and
(3) Strengthening commercial driver licensing and testing standards.

To the extent that this Article conflicts with general driver licensing provisions, this Article prevails. Where this Article is silent, the general driver licensing provisions apply. (1989, c. 771, s. 2.)

§ 20-37.12. Commercial drivers license required.

(a) On or after April 1, 1992, no person shall operate a commercial motor vehicle on the highways of this State unless he has first been issued and is in immediate possession of a commercial drivers license with applicable endorsements valid for the vehicle he is driving; provided, a person may operate a commercial motor vehicle after being issued and while in possession of a commercial driver learner's permit and while accompanied by the holder of a commercial drivers license valid for the vehicle being driven.

(b) The out-of-service criteria as referred to in 49 C.F.R. Subchapter B apply to a person who drives a commercial motor vehicle. No person shall drive a commercial motor vehicle on the highways of this State in violation of an out-of-service order.

(c) Repealed by Session Laws 1991, c. 726, s. 15.

(d) **(Effective until March 31, 2010)** Any person who is not a resident of this State, who has been issued a commercial drivers license by his state of residence, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has

G.S. 20-37.12(d) is set out twice.

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not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State.

(d) **(Effective March 31, 2010)** Any person who is not a resident of this State, who has been issued a commercial drivers license by his state of residence, or who holds any license recognized by the federal government that grants the privilege of driving a commercial motor vehicle, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State.

(e) G.S. 20-7 sets the time period in which a new resident of North Carolina must obtain a license from the Division. The Commissioner may establish by rule the conditions under which the test requirements for a commercial drivers license may be waived for a new resident who is licensed in another state.

(f) A person shall not be convicted of failing to carry a commercial drivers license if, by the date the person is required to appear in court for the violation, the person produces to the court a commercial drivers license issued to the person that was valid on the date of the offense. (1989, c. 771, s. 2; 1991, c. 726, s. 15; 1997-122, s. 5; 1998-149, s. 4; 2003-397, s. 3; 2009-416, s. 5.)

Subsection (d) is set out twice. — The first version of subsection (d) set out above is effective until March 31, 2010. The second version of subsection (d) set out above is effective March 31, 2010.

Effect of Amendments. — Session Laws 2009-416, s. 5, effective March 31, 2010, and applicable to offenses committed on or after that date, inserted "or who holds any license recognized by the federal government that grants the privilege of driving a commercial motor vehicle" in subsection (d).

§ 20-37.13. Commercial drivers license qualification standards.

(a) No person shall be issued a commercial drivers license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The

Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:

a. Had more than one drivers license, except during the 10-day period beginning on the date he is issued a drivers license, or unless, prior to December 31, 1989, he was required to have more than one license by a State law enacted prior to June 1, 1986;

b. Had any drivers license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(c1) The Division may waive the skills test for applicants at the time they apply for a commercial drivers license if the applicant meets all of the following:

(1) The applicant has passed all required written knowledge exams.

(2) The applicant has not, and certifies that the applicant has not, at any time during the two years immediately preceding the date of application done any of the following:

a. Had any drivers license or driving privilege suspended, revoked, or cancelled;

b. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

c. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

d. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2.

(3) The applicant certifies, and provides satisfactory evidence on the date of application, that the applicant is a member of an active or reserve component of a branch of the United States Armed Forces and is regularly employed in a job requiring the operation of a commercial motor vehicle, and the applicant either:
   a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or
   b. Has operated for the two-year period immediately preceding the date of application a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military.

(d) A commercial drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit. G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver.

(f) Notwithstanding subsection (e) of this section, a commercial driver learner's permit with a P or S endorsement shall not be issued to any person who is required to register under Article 27A of Chapter 14 of the General Statutes. (1989, c. 771, s. 2; 1991, c. 726, s. 16; 1991 (Reg. Sess., 1992), c. 916, s. 1; 2005-349, s. 8; 2009-274, s. 4; 2009-491, s. 5; 2009-494, s. 1.)

Editor's Note. — Session Laws 2009-491, s. 7, provides in part: "This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009."

Effect of Amendments. — Session Laws 2009-274, s. 4, effective July 10, 2009, and applicable to all licenses expiring on or after that date, substituted "Armed Forces" for "armed forces" in subdivision (c1)(3).

Session Laws 2009-491, s. 5, effective December 1, 2009, added subsection (f). See Editor's note for applicability.

Session Laws 2009-494, s. 1, effective January 1, 2010, and applicable to any commercial drivers license issued on or after that date, added subsection (c1).

CASE NOTES

Cited in State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

§ 20-37.14. Nonresident commercial driver license.

The Division may issue a nonresident commercial driver license (NRCDL) to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 C.F.R., Part 383. The word "Nonresident" must appear on the face of the NRCDL. An applicant must surrender any NRCDL issued by another state. Prior to issuing a NRCDL, the Division shall establish the practical capability of revoking, suspending, or cancelling the NRCDL and disqualifying that person with the same conditions applicable to the commercial driver license issued to a resident of this State. (1989, c. 771, s. 2.)

§ 20-37.14A. Prohibit issuance or renewal of certain categories of commercial drivers licenses to sex offenders.

(a) Effective December 1, 2009, the Division shall not issue or renew a commercial drivers license with a P or S endorsement to any person who is required to register under Article 27A of Chapter 14 of the General Statutes.

(b) The Division shall not issue a commercial drivers license with a P or S endorsement to an applicant until the Division has searched both the statewide registry and the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in North Carolina or another state.

(1) If the Division finds that the person is currently registered as a sex offender in either North Carolina or another state, the Division, in compliance with subsection (a) of this section, shall not issue a commercial drivers license with a P or S endorsement to the person.

(2) If the Division is unable to access either the statewide registry or all of the states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a commercial drivers license with a P or S endorsement, then the Division shall issue the commercial drivers license with the P or S endorsement but shall first require the person to sign an affidavit stating that the person does not appear on either the statewide registry or the National Sex Offender Public Registry. The Division shall search the statewide registry and the National Sex Offender Public Registry for the person within a reasonable time after access to the statewide registry or the National Sex Offender Public Registry is restored. If the person does appear in either registry, the person is in violation of this section, and the Division shall immediately cancel the commercial drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(3) Any person denied a commercial license with a P or S endorsement or who is disqualified from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter, in the superior court of the county where the person resides, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district. The court or judge is vested with jurisdiction to hear the petition, and it shall be the duty of the judge or court to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine

whether the petitioner is entitled to a commercial drivers license with a P or S endorsement under the provisions of this subsection.

(c) Any person who makes a false affidavit, or who knowingly swears or affirms falsely, to any matter or thing required by the terms of this section to be affirmed to or sworn is guilty of a Class I felony. (2009-491, s. 6.)

Editor's Note. — Session Laws 2009-491, s. 7, provides: "This act becomes effective December 1, 2009. This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009."

§ 20-37.15. Application for commercial drivers license.

(a) An application for a commercial drivers license must include the information required by G.S. 20-7 for a regular drivers license and a consent to release driving record information.

(a1) The application must be accompanied by a nonrefundable application fee of thirty dollars ($30.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.

(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c).

(b) When the holder of a commercial drivers license changes his name or residence address, an application for a duplicate shall be made as provided in G.S. 20-7.1 and a fee paid as provided in G.S. 20-14. (1989, c. 771, s. 2; 1991, c. 726, s. 17; 1993 (Reg. Sess., 1994), c. 750, s. 3; 2005-276, s. 44.1(f).)

§ 20-37.16. Content of license; classifications and endorsements; fees.

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL — A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL — A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL — A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. — The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers

Endorsement	Vehicles That Can Be Driven
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials.

To qualify for any of the above endorsements, an applicant shall pass a knowledge test. To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(c1) Expired.

(d) The fee for a Class A, B, or C commercial drivers license is fifteen dollars ($15.00) for each year of the period for which the license is issued. The fee for each endorsement is three dollars ($3.00) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:
  a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.
  b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.
  c. Is not used in the operations of a for-hire motor carrier.
  d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

(f) For the purposes of this section, the term "school bus" has the same meaning as in 49 C.F.R. § 383.5. (1989, c. 771, s. 2; 1991, c. 726, s. 18; 1993, c. 368, s. 4; 1993 (Reg. Sess., 1994), c. 750, ss. 4, 6; 1995 (Reg. Sess., 1996), c. 695, s. 1; c. 756, s. 5; 1998-149, s. 5; 2003-397, ss. 4, 5; 2005-276, s. 44.1(g); 2005-349, s. 9.)

Editor's Note. — Session Laws 1993, c. 368, which amended this section, in s. 5 provides: "A drivers license or a special identification card issued by the Division of Motor Vehicles before January 1, 1995, and renewed by the Division after that date is considered the first drivers license or special identification card issued by the Division for purposes of determining when the license or card expires."

Session Laws 2003-397, s. 7, provides, in part, that s. 5, which added subsection (c1), expires September 30, 2005.

OPINIONS OF ATTORNEY GENERAL

Private carriers operated by drivers employed in logging operations are entitled to the exemption for "farm" vehicles under § 20-37.16(e)(3) if agricultural or forest products being transported were raised and grown by farmer/forester and he does not engage in business of buying products for resale. Then he and his employees could transport such forest products within 150 miles of farm in vehicles not used in common or contract motor carrier operations without obtaining commercial driver's license. Conversely, if forest products were not raised and grown by forester, or he engages in buying of forest products for resale, transporting of those products by him or his employees would not be exempt from commercial driver's license requirements for, as to those forest products, forester was not a farmer. See opinion of Attorney General to Rep. Beverly M. Purdue, 3rd District: Craven, Lenoir, Pamlico Counties, 60 N.C.A.G. 30 (1990).

§ 20-37.17. Record check and notification of license issuance.

Before issuing a commercial driver license, the Division shall obtain driving record information from the Commercial Driver License Information System (CDLIS), the National Driver Register, and from each state in which the person has been licensed.

Within 10 days after issuing a commercial driver license, the Division shall notify CDLIS of the issuance of the commercial driver license, providing all information necessary to ensure identification of the person. (1989, c. 771, s. 2.)

§ 20-37.18. Notification required by driver.

(a) Any driver holding a commercial driver license issued by this State who is convicted of violating any State law or local ordinance relating to motor vehicle traffic control in any other state, other than parking violations, shall notify the Division in the manner specified by the Division within 30 days of the date of the conviction.

(b) Any driver holding a commercial driver license issued by this State who is convicted of violating any State law or local ordinance relating to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his employer in writing of the conviction within 30 days of the date of conviction.

(c) Any driver whose commercial driver license is suspended, revoked, or cancelled by any state, or who loses the privilege to drive a commercial motor vehicle in any state for any period, including being disqualified from driving a commercial motor vehicle, or who is subject to an out-of-service order, shall notify his employer of that fact before the end of the business day following the day the driver received notice of that fact.

(d) Any person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the 10 years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;
(2) The dates between which the applicant drove for each employer; and
(3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. Any employer may require an applicant to provide additional information. (1989, c. 771, s. 2.)

§ 20-37.19. Employer responsibilities.

(a) Each employer shall require the applicant to provide the information specified in G.S. 20-37.18(c).

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from

driving a commercial vehicle, or is subject to an out-of-service order in any state; or

(2) In which the driver has more than one driver license; [or]

(3) **(Effective March 31, 2010)** In which the driver, the commercial motor vehicle being operated, or the motor carrier operation, is subject to an out-of-service order.

(c) The employer of any employee or applicant who tests positive or of any employee who refuses to participate in a drug or alcohol test required under 49 C.F.R. Part 382 and 49 C.F.R. Part 655 must notify the Division in writing within five business days following the employer's receipt of confirmation of a positive drug or alcohol test or of the employee's refusal to participate in the test. The notification must include the driver's name, address, drivers license number, social security number, and results of the drug or alcohol test or documentation from the employer of the refusal by the employee to take the test. (1989, c. 771, s. 2; 2005-156, s. 1; 2007-492, s. 2; 2009-416, s. 6.)

Effect of Amendments. — Session Laws 2009-416, s. 6, effective March 31, 2010 and applicable to offenses committed on or after that date, added subdivision (b)(3).

§ 20-37.20. Notification of traffic convictions.

(a) Out-of-state Resident. — Within 10 days after receiving a report of the conviction of any nonresident holder of a commercial driver license for any violation of State law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial vehicle, the Division shall notify the driver licensing authority in the licensing state of the conviction.

(b) Foreign Diplomat. — The Division must notify the United States Department of State within 15 days after it receives one or more of the following reports for a holder of a drivers license issued by the United States Department of State:

(1) A report of a conviction for a violation of State law or local ordinance relating to motor vehicle traffic control, other than parking violations.

(2) A report of a civil revocation order. (1989, c. 771, s. 2; 2001-498, s. 7; 2002-159, s. 31; 2006-209, s. 7.)

Editor's Note. — Session Laws 2001-498, s. 8, as amended by Session Laws 2006-209, s. 7, provides that s. 7, which added subsection (b), "becomes effective at the earliest practical date, but no later than January 1, 2003."

§ 20-37.20A. Driving record notation for testing positive in a drug or alcohol test.

Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol or drug test of a person holding a commercial drivers license, and subject to any appeal of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on the driving record of the driver. A notation of a disqualification pursuant to G.S. 20-17.4(l) shall be retained on the record of a person for a period of three years following the end of any disqualification of that person. (2005-156, s. 3; 2008-175, s. 2.)

Effect of Amendments. — Session Laws 2008-175, s. 2, effective December 1, 2008, and applicable to offenses committed on or after that date, substituted "three years" for "two years" in the last sentence.

§ 20-37.20B. Appeal of disqualification for testing positive in a drug or alcohol test.

Following receipt of notice pursuant to G.S. 20-37.19(c) of a positive test in an alcohol or drug test, the Division shall notify the driver of the pending disqualification of the driver to operate a commercial vehicle and the driver's right to a hearing if requested within 20 days of the date of the notice. If the Division receives no request for a hearing, the disqualification shall become effective at the end of the 20-day period. If the driver requests a hearing, the disqualification shall be stayed pending outcome of the hearing. The hearing shall take place at the offices of the Division of Motor Vehicles in Raleigh. The hearing shall be limited to issues of testing procedure and protocol. A copy of a positive test result accompanied by certification by the testing officer of the accuracy of the laboratory protocols that resulted in the test result shall be prima facie evidence of a confirmed positive test result. The decision of the Division hearing officer may be appealed in accordance with the procedure of G.S. 20-19(c6). (2005-156, s. 4.)

§ 20-37.21. Penalties.

(a) **(Effective until March 31, 2010)** Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.

(a) **(Effective March 31, 2010)** Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, the person shall be subject to a civil penalty pursuant to the provisions of 49 C.F.R. § 383.53(b).

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). In addition, upon conviction, the employer shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(d) An employer who knowingly allows, requires, permits, or otherwise authorizes an employee to violate any railroad grade requirements contained in G.S. 20-142.1 through G.S. 20-142.5 shall pay a civil penalty of not more than ten thousand dollars ($10,000). (1989, c. 771, s. 2; 1993, c. 539, s. 327; 1994, Ex. Sess., c. 24, s. 14(c); 2005-349, s. 10; 2009-416, s. 7.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until March 31, 2010. The second version of subsection (a) set out above is effective March 31, 2010.

Effect of Amendments. — Session Laws 2009-416, s. 7, effective March 31, 2010, and applicable to offenses committed on or after that date, in subsection (a), deleted "upon conviction" following "In addition" and substituted "pursuant to the provisions of 49 C.F.R. § 383.53(b)" for "of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense."

§ 20-37.22. Rule making authority.

The Division may adopt any rules necessary to carry out the provisions of this Article. (1989, c. 771, s. 2.)

CASE NOTES

Cited in Hensley v. Nat'l Freight Transp., Inc., — N.C. App. —, 668 S.E.2d 349, 2008 N.C. App. LEXIS 1978 (2008).

§ 20-37.23. Authority to enter agreements.

The Commissioner shall have the authority to execute or make agreements, arrangements, or declarations to carry out the provisions of this Article. (1989, c. 771, s. 2.)

§ 20-38: Repealed by Session Laws 1973, c. 1330, s. 39.

Editor's Note. — G.S. 20-38 was enacted as Part 1 of Article 3. It was transferred as a result of the enactment of Article 2C.

ARTICLE 2D.

Implied-Consent Offense Procedures.

§ 20-38.1. Applicability.

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division. (2006-253, s. 5.)

§ 20-38.2. Investigation.

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to investigate and seek evidence of the driver's impairment anywhere in-state or out-of-state, and to make arrests at any place within the State. (2006-253, s. 5.)

§ 20-38.3. Police processing duties.

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section. (2006-253, s. 5.)

§ 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. — Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

§ 20-38.5. Facilities.

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

(1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

(2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.

(3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section. (2006-253, s. 5.)

§ 20-38.6. Motions and district court procedure.

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal. (2006-253, s. 5.)

CASE NOTES

Jurisdiction. — Trial court could not determine that it did not have jurisdiction to hear the appeal of the district court's granting of defendant's motion to suppress evidence. After considering an appeal pursuant to G.S. 20-38.7(a), the trial court was required to enter an order remanding the matter to the district court with instructions to grant or deny defendant's NG.S. 20-38.6 motion to suppress, especially since (1) G.S. 20-38.7(a) did not have a 10-day time limit for appeal; and (2) the State's notice of appeal otherwise met the G.S. 15A-1432(b) requirements for appealing a matter from the district court to the trial court. State v. Palmer, — N.C. App. —, 676 S.E.2d 559, 2009 N.C. App. LEXIS 823 (May 19, 2009).

G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not violate the separation of powers doctrine of the North Carolina Constitution because there is no usurpation of the judicial power of the State by the Legislature in the enactment of these statutory provisions. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Constitutionality. — State's right to appeal a district court's preliminary determination indicating that it would grant a defendant's pretrial motion to suppress or dismiss made in accordance with G.S. 20-38.6(a) does not deprive defendants charged with implied-consent offenses of their guaranteed freedom from former jeopardy because at the time a defendant's pretrial motions to suppress or dismiss are made, heard, and decided by the district court, the defendant has not yet been put to trial before the trier of fact, and, so, jeopardy has not yet attached to the proceedings, and the General Assembly intended the pretrial motions to suppress evidence or dismiss charges made in accordance with G.S. 20-38.6(a) to address only procedural matters including, but not limited to, delays in the processing of a defendant, limitations imposed on a defendant's access to witnesses, and challenges to the results of a breathalyzer; by enacting G.S. 20-38.6(a), (f) and G.S. 20-38.7(a), the General Assembly has granted the State a right of appeal to superior court only from a district court's preliminary determination indicating that it would grant a defendant's pretrial motion to suppress evidence or dismiss charges on an implied-consent offense which (1) is made and decided in district court at a time before jeopardy has attached to the proceedings, i.e., before the district court sits as the trier of fact to adjudicate the defendant's guilt, and (2) is entirely unrelated to the sufficiency of evidence as to any element of the offense or to defendant's guilt or innocence. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Pretrial motion requirement of G.S. 20-38.6(a) does not infringe on the fundamental right to a fair trial of defendants charged with implied-consent offenses appearing in district court because although, unlike other defendants appearing in district court, G.S. 20-38.6(a) generally requires defendants charged with implied-consent offenses to make motions to suppress evidence or dismiss charges prior to trial, the express language of G.S. 20-38.6(a) also protects defendants against any disadvantage they could suffer as a result of the absence of a statutory right to discovery in district court, since any unfair surprise that might arise from the discovery of facts not previously known to a defendant is tempered by allowing defendants to make motions to suppress or dismiss during the course of the trial on the basis of newly discovered facts. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

State's appeal from a district court's preliminary determination indicating that it would grant a defendant's pretrial motion made in accordance with G.S. 20-38.6(a) on an implied-consent offense charge does not infringe on a defendant's fundamental right to a speedy trial because the General Assembly's decision to refrain from establishing a time by which the State must give notice of appeal from a district court's preliminary determination indicating that it would grant a defendant's pretrial motion made in accordance with § 20-38.6(a) will require an examination of the circumstances of each particular case in which a defendant alleges that the State acted in violation of his or her fundamental right to a speedy trial by subjecting that defendant to undue delay. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not violate substantive due process because they are not unreasonable, arbitrary or capricious, and are substantially related to the valid object sought to be obtained; the Legislature determined that the pretrial procedures codified in G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) would serve as a means to improve the safety of the motoring public of North Carolina. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not violate the Equal Protection Clause of the United States Constitution or of the North Carolina Constitution because the Legislature's objective to improve the safety of the motoring public of North Carolina is a legitimate objective and the procedures established by G.S. 20-38.6(a), (f), and G.S. 20-38.7(a) are rationally related to that objective; no classification between different groups has been created, but all defendants charged with an implied-consent offense appearing in district court will be subject to the same procedural requirements established by G.S. 20-38.6(a), (f) and G.S. 20-38.7(a), State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Motion to Dismiss. — Superior court erred when it concluded that it appeared the district court's conclusions of law granting defendant's motion to dismiss under G.S. 20-38.6(a) were based upon the findings of fact that were cited in the district court's order because there was no indication in the record that the State had the opportunity to present all of its evidence prior to the district court's preliminary determination indicating that it would dismiss the charge against defendant. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Procedures of G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not apply to the appellate division because by enacting these provisions, the General Assembly created rules which affect the procedure and practice of the superior and district court divisions only, as it is constitutionally permitted to do pursuant to N.C. Const., Art. IV, § 13, cl. 2; because the General Assembly is constitutionally authorized to create rules of procedure and practice for the superior and district courts, to prescribe the jurisdiction and powers of the district courts, and to circumscribe the jurisdiction of the superior courts, a constitutional amendment is not required for the General Assembly to promulgate a rule of procedure and practice pertaining exclusively to the superior and district courts. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Cited in State v. Morgan, 189 N.C. App. 716, 660 S.E.2d 545, 2008 N.C. App. LEXIS 688 (2008).

§ 20-38.7. Appeal to superior court.

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions.

(d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:

(1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated sentence, and

(2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.

A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal. (2006-253, s. 5; 2007-493, s. 9; 2008-187, s. 10.)

Effect of Amendments. — Session Laws 2008-187, s. 10, effective August 7, 2008, substituted "sentence" for "judgment" at the end of subdivision (d)(1).

CASE NOTES

Constitutionality. — G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not violate substantive due process because they are not unreasonable, arbitrary or capricious, and are substantially related to the valid object sought to be obtained; the Legislature determined that the pretrial procedures codified in G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) would serve as a means to improve the safety of the motoring public of North Carolina. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

State's right to appeal a district court's preliminary determination indicating that it would grant a defendant's pretrial motion to suppress or dismiss made in accordance with G.S. 20-38.6(a) does not deprive defendants charged with implied-consent offenses of their guaranteed freedom from former jeopardy because at the time a defendant's pretrial motions to suppress or dismiss are made, heard, and decided by the district court, the defendant has not yet been put to trial before the trier of fact, and, so, jeopardy has not yet attached to the proceedings, and the General Assembly intended the pretrial motions to suppress evidence or dismiss charges made in accordance with G.S. 20-38.6(a) to address only procedural matters including, but not limited to, delays in the processing of a defendant, limitations imposed on a defendant's access to witnesses, and challenges to the results of a breathalyzer; by enacting G.S. 20-38.6(a), (f) and G.S. 20-38.7(a), the General Assembly has granted the State a right of appeal to superior court only from a district court's preliminary determination indicating that it would grant a defendant's pretrial motion to suppress evidence or dismiss charges on an implied-consent offense which (1) is made and decided in district court at a time before jeopardy has attached to the proceedings, i.e., before the district court sits as the trier of fact to adjudicate the defendant's guilt, and (2) is entirely unrelated to the sufficiency of evidence as to any element of the offense or to defendant's guilt or innocence. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not violate the Equal Protection Clause of the United States Constitution or of the North Carolina Constitution because the Legislature's objective to improve the safety of the motoring public of North Carolina is a legitimate objective and the procedures established by G.S. 20-38.6(a), (f), and G.S. 20-38.7(a) are rationally related to that objective; no classification between different groups has been created, but all defendants charged with an implied-consent offense appearing in district court will be subject to the same procedural requirements established by G.S. 20-38.6(a), (f) and G.S. 20-38.7(a), State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Procedures of G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not apply to the appellate division because by enacting these provisions, the General Assembly created rules which affect the procedure and practice of the superior and district court divisions only, as it is constitutionally permitted to do pursuant to N.C. Const,. Art. IV, § 13, cl. 2; because the General Assembly is constitutionally authorized to create rules of procedure and practice for the superior and district courts, to prescribe the jurisdiction and powers of the district courts, and to circumscribe the jurisdiction of the superior courts, a constitutional amendment is not required for the General Assembly to promulgate a rule of procedure and practice pertaining exclusively to the superior and district courts. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Jurisdiction. — Trial court could not determine that it did not have jurisdiction to hear the appeal of the district court's granting of defendant's motion to suppress evidence. After considering an appeal pursuant to G.S. 20-38.7(a), the trial court was required to enter an order remanding the matter to the district court with instructions to grant or deny defendant's G.S. 20-38.6 motion to suppress, especially since (1) G.S. 20-38.7(a) did not have a 10-day time limit for appeal; and (2) the State's notice of appeal otherwise met the G.S. 15A-1432(b) requirements for appealing a matter from the district court to the trial court. State v. Palmer, — N.C. App. —, 676 S.E.2d 559, 2009 N.C. App. LEXIS 823 (May 19, 2009).

G.S. 20-38.6(a), (f) and G.S. 20-38.7(a) do not violate the separation of powers doctrine of the North Carolina Constitution because there is no usurpation of the judicial power of the State by the Legislature in the enactment of these statutory provisions. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

Right to Appeal. — Because a superior court must remand a matter heard pursuant to G.S. 20-38.7(a) to a district court for a final entry of judgment on a defendant's pretrial motion, the State will not be able to appeal to the appellate division pursuant to G.S. 15A-979(c) if the superior court determines that a defendant's pretrial motion to suppress should be granted. State v. Fowler, — N.C. App. —, 676 S.E.2d 523, 2009 N.C. App. LEXIS 832 (May 19, 2009).

ARTICLE 3.

Motor Vehicle Act of 1937.

Part 1. General Provisions.

§ 20-38.100: Reserved for future codification purposes.

Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal; fees.

(a) The Commissioner is hereby vested with the power and is charged with the duty of administering and enforcing the provisions of this Article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the Division.

(b) The Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this Article and any other laws the enforcement and administration of which are vested in the Division.

(c) The Commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this Article.

(d) The Commissioner shall adopt an official seal for the use of the Division.

(e) The Commissioner is authorized to cooperate with and provide assistance to the Environmental Management Commission, or appropriate local government officials, and to develop, adopt, and ensure enforcement of necessary rules and regulations, regarding programs of motor vehicle emissions inspection/maintenance required for areas in which ambient air pollutant concentrations exceed National Ambient Air Quality Standards.

(f) The Commissioner is authorized to charge and collect the following fees for the verification of equipment to be used on motor vehicles or to be sold in North Carolina, when that approval is required pursuant to this Chapter:

(1) When a federal standard has been established, the fee shall be equal to the cost of verifying compliance with the applicable federal standard; or

(2) When no federal standard has been established, the fee shall be equal to the cost of verifying compliance with the applicable State standard. Any motor vehicle manufacturer or distributor who is required to certify his products under the National Traffic and Motor Vehicle Safety Act of 1966, as from time to time amended, may satisfy the provisions of this section by submitting an annual written certification to the Commissioner attesting to the compliance of his vehicles with applicable federal requirements. Failure to comply with the certification requirement or failure to meet the federal standards will subject the manufacturer or distributor to the fee requirements of this subsection.

(g), (h) Repealed by Session Laws 2001-424, s. 6.14(e), effective September 26, 2001.

(i) Notwithstanding the requirements of G.S. 20-7.1 and G.S. 20-67(a), the Commissioner may correct the address records of drivers license and registration plate holders as shown in the files of the Division to that shown on notices and renewal cards returned to the Division with new addresses provided by the United States Postal Service. (1937, c. 407, s. 4; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 1; 1983, c. 223; c. 629, s. 2; c. 768, ss. 25.1, 25.2; 1985, c. 767, ss. 1, 2; 1987, c. 552; 1991, c. 53, s. 1; c. 654, s. 1; 1993, c. 539, s. 328; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 6.2(b); 1996, 2nd Ex. Sess., c. 18, s. 23(a); 1997-256, s. 8; 1997-347, s. 4; 1997-401, s. 4; 1997-418, s. 3; 1997-443, s. 20.10(a), (b); 2001-424, ss. 6.14(e), 6.14(f).)

Cross References. — As to Commissioner and organization of Division, see G.S. 20-2 and 20-3. For definitions applicable throughout this Chapter, see G.S. 20-4.01. For requirements regarding marking and issuance of license plates for publicly owned vehicles, see G.S. 20-39.1.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20, provides: "The Division of Motor Vehicles shall report quarterly, beginning in January 1995, to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division, on the Emission Inspection Program's compliance with regulations the Environmental Protection Agency adopted for the inspection and maintenance activities required in the Clean Air Amendments of 1990. The report shall include the receipts and expenditures from the Emissions Program Account."

CASE NOTES

Commissioner Immune from Liability for Mere Negligence in Performance of his Duties. — There can be little doubt that the Commissioner exercises some portion of the sovereign power of the State, and as such, is a public officer, and is immune from liability for mere negligence in the performance of his duties. Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto., Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987).

Immunity of Inspector for Negligence. — Inspector employed by the enforcement section of the DMV was a public official, immune from liability for negligent acts. Murray v. Justice, 96 N.C. App. 169, 385 S.E.2d 195, cert. denied, 326 N.C. 364, 389 S.E.2d 115 (1990).

§ 20-39.1. Publicly owned vehicles to be marked; private license plates on publicly owned vehicles.

(a) Except as otherwise provided in this section, the executive head of every department of State government and every county, institution, or agency of the State shall mark every motor vehicle owned by the State, county, institution, or agency with a statement that the vehicle belongs to the State, county, institution, or agency. The requirements of this subsection are complied with if:

(1) The vehicle has imprinted on the license plate, above the license number, the words "State Owned" and the vehicle has affixed to the front the words "State Owned";

(2) In the case of a county, the vehicle has painted or affixed on its side a circle not less than eight inches in diameter showing a replica of the seal of the county; or

(3) In the case of vehicles assigned to members of the Council of State, the vehicle has imprinted on the license plate the license number assigned to the appropriate member of the Council of State pursuant to G.S. 20-79.5(a); a member of the Council of State shall not be assessed any registration fee if the member elects to have a State-owned motor vehicle assigned to the member designated by the official plate number.

(b) A motor vehicle used by any State or county officer or official for transporting, apprehending, or arresting persons charged with violations of the laws of the United States or the laws of this State is not required to be marked as provided in subsection (a) of this section. The Commissioner may lawfully provide private license plates to local, State, or federal departments or agencies for use on publicly owned or leased vehicles used for those purposes. Private license plates issued under this subsection shall be issued on an annual basis and the records of issuance shall be maintained in accordance with the provisions of G.S. 20-56.

(c) A motor vehicle used by a county for transporting day or residential facility clients of area mental health, developmental disabilities, and substance abuse authorities established under Article 4 of Chapter 122C of the General Statutes is not required to be marked as provided in subsection (a) of this section. The Commissioner may lawfully provide private license plates to counties for use on publicly owned or leased vehicles used for that purpose. Private license plates issued under this subsection shall be issued on an annual basis and the records of issuance shall be maintained in accordance with the provisions of G.S. 20-56.

(d) For purposes of this section, the term "private license plate" refers to a license plate that would normally be issued to a private party and therefore lacks any markings indicating that it has been assigned to a publicly owned vehicle. "Confidential" license plates are a specialized form of private license plate for which a confidential registration has been authorized under subsection (e) of this section. "Fictitious" license plates are a specialized form of private license plate for which a fictitious registration has been issued under subsection (f) or (g) of this section.

(e) Upon approval and request of the Director of the State Bureau of Investigation, the Commissioner shall issue confidential license plates to local, State, or federal law enforcement agencies, the Department of Crime Control and Public Safety, agents of the Internal Revenue Service, and agents of the Department of Defense in accordance with the provisions of this subsection. Applicants in these categories shall provide satisfactory evidence to the Director of the State Bureau of Investigation of the following:

(1) The confidential license plate requested is to be used on a publicly owned or leased vehicle that is primarily used for transporting, apprehending, or arresting persons charged with violations of the laws of the United States or the State of North Carolina;

(2) The use of a confidential license plate is necessary to protect the personal safety of an officer or for placement on a vehicle used primarily for surveillance or undercover operations; and

(3) The application contains an original signature of the head of the requesting agency or department or, in the case of a federal agency, the signature of the senior ranking officer for that agency in this State.

Confidential license plates issued under this subsection shall be issued on an annual basis and the Division shall maintain a separate registration file for vehicles bearing confidential license plates. That file shall be confidential for the use of the Division and is not a public record within the meaning of Chapter 132 of the General Statutes. Upon the annual renewal of the registration of a vehicle for which a confidential status has been established under this section, the registration shall lose its confidential status unless the agency or department supplies the Director of the State Bureau of Investigation with information demonstrating that an officer's personal safety remains at risk or that the vehicle is still primarily used for surveillance or undercover operations at the time of renewal.

(f) The Commissioner may to the extent necessary provide law enforcement officers of the Division on special undercover assignments with motor vehicle operator's licenses and motor vehicle license plates under assumed names, using false or fictitious addresses. The Commissioner shall be responsible for the request for issuance and use of such licenses and license plates, and may direct the immediate return of any license or license plate issued pursuant to this subsection.

(g) The Commissioner may, upon the request of the Director of the State Bureau of Investigation and to the extent necessary, lawfully provide local, State, and federal law enforcement officers on special undercover assignments and to agents of the Department of Defense with motor vehicle drivers licenses and motor vehicle license plates under assumed names, using false or fictitious addresses. Fictitious license plates shall only be used on publicly owned or leased vehicles. A request for fictitious licenses and license plates by a local, State or federal law enforcement agency or department or by the Department of Defense shall be made in writing to the Director of the State Bureau of Investigation and shall contain an original signature of the head of the requesting agency or department or, in the case of a federal agency, the signature of the senior ranking officer for that agency in this State.

Prior to the issuance of any fictitious license or license plate, the Director of the State Bureau of Investigation shall make a specific written finding that the request is justified and necessary. The Director shall maintain a record of all such licenses, license plates, assumed names, false or fictitious addresses, and law enforcement officers using the licenses or license plates. That record shall be confidential and is not a public record within the meaning of Chapter 132 of the General Statutes. The Director shall request the immediate return of any license or registration that is no longer necessary.

Licenses and license plates provided under this subsection shall expire six months after initial issuance unless the Director of the State Bureau of Investigation has approved an extension in writing. The head of the local, State, or federal law enforcement agency or the Department of Defense shall be responsible for the use of the licenses and license plates and shall return them immediately to the Director for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or license plate issued pursuant to this subsection shall be punished as a Class 2 misdemeanor. At no time shall the number of valid licenses issued under this subsection exceed two hundred nor shall the number of valid license plates issued under this subsection exceed one hundred twenty-five unless the Director determines that exceptional circumstances justify exceeding those amounts. However, fictitious licenses and license plates issued to special agents of the State Bureau of Investigation, State alcohol law enforcement agents, and the Department of Defense shall not be counted against the limitation on the total number of fictitious licenses and plates established by this subsection and shall be renewable annually.

(h) No private, confidential, or fictitious license plates issued under this section shall be used on privately owned vehicles under any circumstances.

(i) The Commissioner shall administer the issuance of private plates for publicly owned vehicles under the provisions of this section to ensure strict compliance with those provisions. The Division shall report to the Joint Legislative Commission on Governmental Operations by January 1 and July 1 of each year on the total number of private plates issued to each agency, and the total number of fictitious licenses and plates issued by the Division. (2001-424, s. 6.14(a); 2001-424, s. 6.14(b); 2001-487, ss. 53, 54; 2003-152, ss. 3, 4; 2003-284, ss. 6.5(a), (b); 2004-124, s. 6.5(a), (b); 2005-276, s. 6.18(a).)

§ 20-40. Offices of Division.

The Commissioner shall maintain an office in Raleigh, North Carolina, and in such places in the State as he shall deem necessary to properly carry out the provisions of this Article. (1937, c. 407, s. 5.)

§ 20-41. Commissioner to provide forms required.

The Commissioner shall provide suitable forms for applications, certificates of title and registration cards, registration number plates and all other forms requisite for the purpose of this Article, and shall prepay all transportation charges thereon. (1937, c. 407, s. 6.)

§ 20-42. Authority to administer oaths and certify copies of records.

(a) Officers and employees of the Division designated by the Commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

(1) One signature	$2.00
(2) Two signatures	3.00
(3) Three or more signatures	4.00

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Division.

(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is ten dollars ($10.00). The fee for an accident report is five dollars ($5.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1; 1967, c. 691, s. 41; c. 1172; 1971, c. 749; 1975, c. 716, s. 5; 1977, c. 785; 1979, c. 801, s. 7; 1981, c. 690, ss. 22, 23; 1991, c. 689, s. 331; 1995, c. 191, s. 8; 2005-276, s. 44.1(h).)

Cross References. — As to copy of record kept by Commissioner, etc., certified by Commissioner, as evidence, see G.S. 8-37.

CASE NOTES

Division's Records Are Competent to Establish Status of License and Driving Privilege. — The records of the Department (now Division), properly authenticated, are competent for the purpose of establishing the status of a person's operator's license and driving privilege. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

As Well as Actions Previously Taken by Division. — Records of the Department (now Division) are competent to prove, among other things, the status of an individual's license and actions previously taken by the Department (now Division). State v. Mabry, 18 N.C. App. 492, 197 S.E.2d 44 (1973).

But Not to Prove Contents of Court Records. — Records of the Department (now Division) of Motor Vehicles are not competent to prove the contents of the records of a court of law. State v. Mabry, 18 N.C. App. 492, 197 S.E.2d 44 (1973).

Admissibility of Certified Copies of Records. — The effect of subsection (b) is to provide merely that properly certified copies of the Department's (now Division's) records are admissible in like manner as the original thereof. State v. Mabry, 18 N.C. App. 492, 197 S.E.2d 44 (1973).

There is no error in allowing a properly certified copy of a record of the Division to be read into evidence by the district attorney, as opposed to having the document passed among the jurors. State v. Miller, 288 N.C. 582, 220 S.E.2d 326 (1975).

Defendant was entitled to have the contents of the official record of the status of his driver's license limited, if he so requested, to the formal parts thereof, including the certification and seal, plus the fact that under official action of the Department (now Division) of Motor Vehicles the defendant's license was in a state of revocation or suspension on the date he was charged with committing an offense under G.S. 20-28. State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

No Restriction on General Rule as to Stamped, Printed or Typewritten Signatures. — This section does not impose upon the general rule that a stamped, printed or typewritten signature is a good signature the restriction that the signature be made under the hand of the person making it. State v. Watts, 289 N.C. 445, 222 S.E.2d 389 (1976).

Applied in State v. Moore, 247 N.C. 368, 101 S.E.2d 26 (1957); State v. Blacknell, 270 N.C. 103, 153 S.E.2d 789 (1967); State v. Hughes, 6 N.C. App. 287, 170 S.E.2d 78 (1969).

Cited in State v. Corl, 250 N.C. 252, 108 S.E.2d 608 (1959); State v. Knight, 261 N.C. 17, 134 S.E.2d 101 (1964); State v. Letterlough, 6 N.C. App. 36, 169 S.E.2d 269 (1969); State v. Parker, 20 N.C. App. 146, 201 S.E.2d 35 (1973); State v. Carlisle, 20 N.C. App. 358, 201 S.E.2d 704 (1973); State v. Salter, 29 N.C. App. 372, 224 S.E.2d 247 (1976).

§ 20-43. Records of Division.

(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours in accordance with G.S. 20-43.1. A photographic image or signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes.

(b) The Commissioner, upon receipt of notification from another state or foreign country that a certificate of title issued by the Division has been surrendered by the owner in conformity with the laws of such other state or foreign country, may cancel and destroy such record of certificate of title. (1937, c. 407, s. 8; 1947, c. 219, s. 1; 1971, c. 1070, s. 1; 1975, c. 716, s. 5; 1995, c. 195, s. 1; 1997-443, s. 32.25(d).)

CASE NOTES

Cited in Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

§ 20-43.1. Disclosure of personal information in motor vehicle records.

(a) The Division shall disclose personal information contained in motor vehicle records in accordance with the federal Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq.

(b) As authorized in 18 U.S.C. § 2721, the Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(11).

(c) The Division shall not disclose personal information for the purposes specified in 18 U.S.C. § 2721(b)(12) unless the Division receives prior written permission from the person about whom the information is requested.

(d) As authorized in 18 U.S.C. § 2721, the Division may disclose personal information to federally designated organ procurement organizations and eye banks operating in this State for the purpose of identifying individuals who have indicated an intent to be an organ donor. Personal information authorized under this subsection is limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license number. Employees of the Division who provide access to or disclosure of information in good-faith compliance with this subsection are not liable in damages for access to or disclosure of the information. (1997-443, s. 32.25(a); 1999-237, s. 27.9(b); 2004-189, s. 2.)

Editor's Note. — Session Laws 1998-23, s. 17.1, as amended by Session Laws 1998-212, s. 27.18(a), had provided that notwithstanding any other provision of law, the Division of Motor Vehicles shall not disclose personal information in its records for purposes specified in 18 U.S.C. § 2721(b)(12) prior to January 1, 2000; and further provides that this section shall not expire until January 1, 2000. Session Laws 1999-237, s. 27.9(a), repealed Session Laws 1998-23, s. 17.1, as amended.

Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

OPINIONS OF ATTORNEY GENERAL

Motor vehicle accident reports are public records, but should be released only after the Division of Motor Vehicles has redacted personal identifying information in accordance with the federal Drivers Privacy Protection Act. See opinion of Attorney General to Mr. George Tatum, Commissioner, North Carolina Division of Motor Vehicles, 2005 N.C. AG LEXIS 1 (2/9/05).

§ 20-43.2. Internet access to organ donation records by organ procurement organizations.

(a) The Department of Transportation, Division of Motor Vehicles, shall establish and maintain a statewide, online Organ Donor Registry Internet site (hereafter "Donor Registry"). The purpose of the Donor Registry is to enable federally designated organ procurement organizations and eye banks to have access 24 hours per day, seven days per week to obtain relevant information on the Donor Registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift through a symbol on the donor's or prospective donor's drivers license, special identification card, or other manner. The data available on the Donor Registry shall be limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license number. The Division of Motor Vehicles shall ensure that only federally designated organ procurement organizations and eye banks operating in this State have access to the Donor Registry in read-only format. The Division of Motor Vehicles shall enable federally designated organ procurement organizations and eye banks operating in this State to have online access in read-only format to the Donor Registry through a unique identifier and password issued to the organ procurement organization or eye bank by the Division of Motor Vehicles. Employees of the Division who provide access to or disclosure of information in good-faith compliance with this section are not liable in damages for access to or disclosure of the information.

(b) When accessing and using information obtained from the Donor Registry, federally designated organ procurement organizations and eye banks shall comply with the requirements of Part 3A of Article 16 of Chapter 130A of the General Statutes.

(c) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(d) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the State. Any such registry must comply with subsections (b) and (c) of this section. (2004-189, s. 1; 2007-538, s. 2.)

Editor's Note. — Session Laws 2004-189, s. 1, has been codified as this section at the direction of the Revisor of Statutes.

Session Laws 2004-189, s. 5(c), as amended by Session Laws 2005-276, s. 44.1(q), provides: "The Division of Motor Vehicles shall retain a portion of five cents ($0.05) collected for the issuance of each drivers license and duplicate license to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

§ 20-43.3: Reserved for future codification purposes.

§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be updated and provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been canceled, except that the list shall not include the name of any formerly licensed driver whose license is expired and has not been renewed for eight years or more. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, social security number, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall also remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the Commissioner by the State Registrar under G.S. 130A-121(b). The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes. (1981, c. 720, s. 2; 1983, c. 197, ss. 1, 1.1; c. 754; c. 768, s. 25.3; 2003-226, s. 7(c); 2007-512, s. 3.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

This section, as amended by Session Laws 2003-226, s. 7, effective January 1, 2004, is applicable with respect to all primaries and elections held on or after that date.

§ 20-44. Authority to grant or refuse applications.

The Division shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle and for a certificate of title therefor, and of any other application lawfully made in the Division, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. (1937, c. 407, s. 9; 1975, c. 716, s. 5.)

§ 20-45. Seizure of documents and plates.

(a) The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used.

(b) The Division may give notice to the owner, licensee or lessee of its authority to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it and require that person to surrender it to the Commissioner or his officers or agents. Any person who fails to surrender the certificate of title, registration card, permit, license, or registration plate or any duplicate thereof, upon personal service of notice or within 10 days after receipt of notice by mail as provided in G.S. 20-48, shall be guilty of a Class 2 misdemeanor.

(c) Any sworn law enforcement officer with jurisdiction, including a member of the State Highway Patrol, is authorized to seize the certificate of title, registration card, permit, license, or registration plate, if the officer has electronic or other notification from the Division that the item has been revoked or cancelled, or otherwise has probable cause to believe that the item has been revoked or cancelled under any law or statute, including G.S. 20-309(e). If a criminal proceeding relating to a certificate of title, registration card, permit, or license is pending, the law enforcement officer in possession of that item shall retain the item pending the entry of a final judgment by a court with jurisdiction. If there is no criminal proceeding pending, the law enforcement officer shall deliver the item to the Division.

(d) Any law enforcement officer who seizes a registration plate pursuant to this section shall report the seizure to the Division within 48 hours of the seizure and shall return the registration plate, but not a fictitious registration plate, to the Division within 10 business days of the seizure. (1937, c. 407, s. 10; 1975, c. 716, s. 5; 1981, c. 938, s. 2; 1993, c. 539, s. 329; 1994, Ex. Sess., c. 24, s. 14(c); 2005-357, s. 1; 2006-105, ss. 2.1, 2.2; 2006-264, s. 98.1.)

§ 20-46: Repealed by Session Laws 1979, c. 99.

§ 20-47. Division may summon witnesses and take testimony.

(a) The Commissioner and officers of the Division designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the Division. Such summons may require the production of relevant books, papers, or records.

(b) Every such summons shall be served at least five days before the return date, either by personal service made by any person over 18 years of age or by registered mail, but return acknowledgment is required to prove such latter service. Failure to obey such a summons so served shall constitute a Class 2 misdemeanor. The fees for the attendance and travel of witnesses shall be the same as for witnesses before the superior court.

(c) The superior court shall have jurisdiction, upon application by the Commissioner, to enforce all lawful orders of the Commissioner under this section. (1937, c. 407, s. 12; 1975, c. 716, s. 5; 1993, c. 539, s. 330; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to fees of witnesses generally, see G.S. 7A-314. As to penalties for persons convicted of misdemeanors for violations of this Article, see G.S. 20-176.

§ 20-48. Giving of notice.

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notice. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00). (1937, c. 407, s. 13; 1955, c. 1187, s. 21; 1971, c. 1231, s. 1; 1975, c. 326, s. 3; c. 716, s. 5; 1983, c. 761, s. 148; 1985, c. 479, s. 171; 2006-253, s. 21.)

CASE NOTES

Due Process Requirements Satisfied. — The provisions of this section, together with the provisions of G.S. 20-16(d), relating to the right of review, and the provisions of G.S. 20-25, relating to the right of appeal, satisfy the requirements of procedural due process. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

This section affords the defendant procedural due process with respect to the manner of giving him notice of the revocation or suspension of his driving privileges. State v. Hayes, 31 N.C. App. 121, 228 S.E.2d 460 (1976).

Section Reasonably Calculated to Give Notice of Proposed and Actual Suspension. — This section, providing for the manner in which notice is to be given, is reasonably calculated to assure that notice will reach the intended party and afford him the opportunity of resisting or avoiding the proposed suspension, as well as to give him notification of the actual suspension of his operator's license and driving privilege. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

Compliance with Section as Constructive Notice of Suspension. — Compliance by the Department (now Division) with the procedure set forth in this section as to notice of suspension of an operator's license and driving privilege constitutes constructive notice to the defendant that his license has been suspended. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970).

Prima Facie Presumption of Receipt from Mailing of Notice. — For purposes of a conviction for driving while one's license is suspended or revoked, mailing of the notice under this section raises only a prima facie presumption that defendant received the notice and thereby acquired knowledge of the suspension or revocation, and defendant is not by this section denied the right to rebut the presumption. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976); State v. Sellers, 58 N.C. App. 43, 293 S.E.2d 226, cert. denied and appeal dismissed, 306 N.C. 749, 295 S.E.2d 485 (1982).

For purposes of a conviction for driving while license is suspended or revoked, mailing of the notice under this section raises only a prima facie presumption that defendant received the notice and thereby acquired knowledge of the suspension or revocation. Thus, defendant is not by this statute denied the right to rebut this presumption. State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985).

The State satisfies the burden of proving that defendant had knowledge at the time charged that his operator's license was suspended or revoked when, nothing else appearing, it has offered evidence of compliance with the notice requirements of this section because of the presumption that he received notice and had such knowledge. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976); State v. Sellers, 58 N.C. App. 43, 293 S.E.2d 226, cert. denied and appeal dismissed, 306 N.C. 749, 295 S.E.2d 485 (1982); State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985).

When there is some evidence to rebut the presumption of receipt of notice and knowledge, the issue of guilty knowledge is raised and must be determined by the jury under appropriate instruction from the trial court. State v. Sellers, 58 N.C. App. 43, 293 S.E.2d 226, cert. denied and appeal dismissed, 306 N.C. 749, 295 S.E.2d 485 (1982).

The failure of the trial court to charge on knowledge of revocation pursuant to G.S. 20-28 in support of an aggravated sentence under G.S. 20-141.5 was not erroneous where the State's evidence tended to show that it complied with the provisions for giving notice of revocation or suspension of a driver's license found in this section and the defendant neither contested that evidence nor offered contrary evidence. State v. Funchess, 141 N.C. App. 302, 540 S.E.2d 435, 2000 N.C. App. LEXIS 1398 (2000).

Knowledge of Revocation. — Trial court erred in denying defendant's motion to dismiss the charge against him of driving while license revoked, as the state did not present sufficient evidence that defendant knew his license was revoked, in part because the state was unable to show that defendant had been notified of the alleged revocation. State v. Cruz, 173 N.C. App. 689, 620 S.E.2d 251, 2005 N.C. App. LEXIS 2288 (2005).

Since defendant chose not to present any evidence at trial, the state met its burden of producing substantial evidence on each element of driving while license revoked in G.S. 20-28(a) by offering evidence that the Department of Motor Vehicles had sent defendant 18 notices of the revocation of defendant's license in compliance with G.S. 20-48(a). State v. Coltrane, 188 N.C. App. 498, 656 S.E.2d 322, 2008 N.C. App. LEXIS 194 (2008), review denied, 362 N.C. 476, 666 S.E.2d 760 (2008).

Defendant's address is relevant to the charge of driving while his license was permanently revoked, since the State has the burden of proving that defendant had knowledge of the revocation prior to the date of his arrest in order to sustain a conviction. State v. Sellers, 58 N.C. App. 43, 293 S.E.2d 226, cert. denied and appeal dismissed, 306 N.C. 749, 295 S.E.2d 485 (1982).

Full Signature and Notarization Not Required on Certificate of Notice. — There is nothing in this section which requires that the certificate to prove that the notice of revocation was mailed in accordance with the statute contain the full signature of the employee making the certificate or that such certificate be notarized. State v. Johnson, 25 N.C. App. 630, 214 S.E.2d 278, cert. denied, 288 N.C. 247, 217 S.E.2d 671 (1975).

Initialed certificate lacking notary's authentication meets all the requirements of this section and provides prima facie evidence of the genuineness of such certificate, the truth of the statements made in such certificate, and the official character of the person who purportedly initialed and executed it. State v. Johnson, 25 N.C. App. 630, 214 S.E.2d 278, cert. denied, 288 N.C. 247, 217 S.E.2d 671 (1975).

Admissibility of Copy of Division Order on Certification of Mailing of Original. — Certification by an employee of the Department (now Division) of Motor Vehicles that the original of an order of security requirement or suspension of driving privilege was mailed to defendant on a specified date at his address shown on the records of the Department (now Division) was sufficient to render admissible a copy of the document in a prosecution of defendant for driving while his license was suspended. State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970).

Applied in State v. Hughes, 6 N.C. App. 287, 170 S.E.2d 78 (1969); State v. Phillips, 25 N.C. App. 313, 212 S.E.2d 906 (1975); State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985).

Cited in Ellis v. White, 156 N.C. App. 16, 575 S.E.2d 809, 2003 N.C. App. LEXIS 34 (2003).

§ 20-49. Police authority of Division.

The Commissioner and such officers and inspectors of the Division as he shall designate and all members of the Highway Patrol and law enforcement officers of the Department of Crime Control and Public Safety shall have the power:

(1) Of peace officers for the purpose of enforcing the provisions of this Article and of any other law regulating the operation of vehicles or the use of the highways.

(2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this Article or other laws regulating the operation of vehicles or the use of the highways.

(3) At all time to direct all traffic in conformance with law, and in the event of a fire or other emergency or to expedite traffic or to insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.

(4) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this Article or of any other law regulating the operation of vehicles to require the driver thereof to stop and exhibit his driver's license and the registration card issued for the vehicle, and submit to an inspection of such vehicle, the registration plates and registration card thereon or to an inspection and test of the equipment of such vehicle.

(5) To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.

(6) To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.

(7) To investigate traffic accidents and secure testimony of witnesses or of persons involved.

(8) To investigate reported thefts of motor vehicles, trailers and semitrailers and make arrest for thefts thereof.

(9) For the purpose of determining compliance with the provisions of this Chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this Chapter or of the registrations of the Division:
   a. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and
   b. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored. (1937, c. 407, s. 14; 1955, c. 554, s. 1; 1975, c. 716, s. 5; 1979, c. 93; 2002-159, s. 31.5(b); 2002-190, s. 5.)

Editor's Note. — Session Laws 2002-190, s. 1, provides: "All statutory authority, powers, duties, and functions, including rulemaking, budgeting, purchasing, records, personnel, personnel positions, salaries, property, and unexpended balances of appropriations, allocations, reserves, support costs, and other funds allocated to the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing are transferred to and vested in the Department of Crime Control and Public Safety. This transfer has all the elements of a Type I transfer as defined in G.S. 143A-6.

"The Department of Crime Control and Public Safety shall be considered a continuation of the transferred portion of the Department of Transportation, Division of Motor Vehicles Enforcement Section, for the purpose of succession to all rights, powers, duties, and obligations of the Enforcement Section and of those rights, powers, duties, and obligations exercised by the Department of Transportation, Division of Motor Vehicles on behalf of the Enforcement Section. Where the Department of Transportation, the Division of Motor Vehicles, or the Enforcement Section, or any combination thereof are referred to by law, contract, or other document, that reference shall apply to the Department of Crime Control and Public Safety.

"All equipment, supplies, personnel, or other properties rented or controlled by the Department of Transportation, Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing shall be administered by the Department of Crime Control and Public Safety."

Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

CASE NOTES

Subdivisions (2) and (4) of this section are not irreconcilable with § 20-183. State v. Allen, 15 N.C. App. 670, 190 S.E.2d 714 (1972), rev'd on other grounds, 282 N.C. 503, 194 S.E.2d 9 (1973).

Duties of an inspector for the Division of Motor Vehicles provide for the exercise of some portion of the sovereign power of the State, and as such said inspector is considered a public officer immune from liability for mere negligence in the performance of his duties. Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto., Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987).

Inspection of a car's identification number differs from a search of a vehicle and seizure of its contents in one important aspect. The occupants of the car cannot harbor an expectation of privacy concerning the identification of the vehicle. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

A police officer should be freer to inspect the identification number without a warrant than he is to search a car for purely private property. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

The state requires manufacturers to identify vehicles by affixing identification numbers which are also recorded in registries where the police and any interested person may inspect them. Since identification numbers are, at the least, quasi-public information, a search of that part of the car displaying the number is but a minimal invasion of a person's privacy. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

Applied in State v. Clark, 21 N.C. App. 35, 203 S.E.2d 103 (1974).

Cited in State v. Francum, 39 N.C. App. 429, 250 S.E.2d 705 (1979).

§ 20-49.1. Supplemental police authority of Division officers.

(a) In addition to the law enforcement authority granted in G.S. 20-49 or elsewhere, the Commissioner and the officers and inspectors of the Division whom the Commissioner designates have the authority to enforce criminal laws under any of the following circumstances:

(1) When they have probable cause to believe that a person has committed a criminal act in their presence and at the time of the violation they are engaged in the enforcement of laws otherwise within their jurisdiction.

(2) When they are asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, the Division officers shall have the same powers vested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this subsection, the Division officers shall not be considered an officer, employee, or agent of the State or local law enforcement agency or designee asking for temporary assistance. Nothing in this section shall be construed to expand the Division officers' authority to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction.

(b) In addition to the law enforcement authority granted in G.S. 20-49 or elsewhere, the Commissioner and the officers and inspectors of the Division whom the Commissioner designates have the authority to investigate drivers license fraud and identity thefts related to drivers license fraud and to make arrests for these offenses. (2004-148, s. 1.)

§ 20-49.2. Supplemental authority of State Highway Patrol Motor Carrier Enforcement officers.

In addition to law enforcement authority granted in G.S. 20-49 or elsewhere, all sworn Motor Carrier Enforcement officers of the State Highway Patrol shall have the authority to enforce criminal laws under the following circumstances:

(1) When they have probable cause to believe that a person has committed a criminal act in their presence and at the time of the violation they are engaged in the enforcement of laws otherwise within their jurisdiction.

(2) When they are asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this section, they shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this section, they shall not be considered an officer, employee, or agent for the State or local law enforcement agency or designee asking for temporary assistance. Nothing in this statute shall be construed to expand their authority to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction. (2004-148, s. 2.)

Establish pilot program for motor carrier enforcement civilian inspection support teams. — Session Laws 2005-276, s. 28.24(a), provides: "The State Highway Patrol Motor Carrier Enforcement Section shall establish a pilot program comprised of two civilian data collection teams to supplement portable weight and inspection operations and to study the potential for increasing the effectiveness of Motor Carrier Enforcement Officers operating remotely from permanent weigh station facilities. Each team shall consist of two civilian members and shall be provided all necessary equipment to supplement the portable weight and inspection operations of the Motor Carrier Enforcement Section of the State Highway Patrol."

Session Laws 2005-276, s. 28.24(b), provides: "The State Highway Patrol shall report the effectiveness of the Civilian Inspection Support Team pilot program and make any recommendations which may increase the effectiveness of Motor Carrier Enforcement activities on bypass routes and areas remote from permanent weigh station facilities to the Joint Legislative Transportation Oversight Committee by August 1, 2006."

Editor's Note. — As enacted, this section contained a subsection (c), but no subsection (a) or (b). This section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 20-49.3. Bureau of License and Theft; custody of seized vehicles.

(a) Vehicles Seized by the Division of Motor Vehicles. — Notwithstanding any other provision of law, the Division of Motor Vehicles, Bureau of License and Theft, may retain any vehicle seized by the Division of Motor Vehicles, Bureau of License and Theft, in the course of any investigation authorized by the provisions of G.S. 20-49 or G.S. 20-49.1 and forfeited to the Division by a court of competent jurisdiction.

(b) Vehicles Seized by the United States Government. — Notwithstanding any other provision of law, the Division may accept custody and ownership of any vehicle seized by the United States Government, forfeited by a court of competent jurisdiction, and turned over to the Division.

(c) Use of Vehicles. — All vehicles forfeited to, or accepted by, the Division pursuant to this section shall be used by the Bureau of License and Theft to conduct undercover operations and inspection station compliance checks throughout the State.

(d) Disposition of Seized Vehicles. — Upon determination by the Commissioner of Motor Vehicles that a vehicle transferred pursuant to the provisions of this section is of no further use to the agency for use in official investigations, the vehicle shall be sold as surplus property in the same manner as other vehicles owned by the law enforcement agency and the proceeds from the sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which the vehicle was seized, provided, that any vehicle transferred to any law enforcement agency under the provisions of this Article that has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer, or disposition other than as junk. The Division shall also reimburse the appropriate county school fund for any diminution in value of any vehicle seized under subsection (a) of this section during its period of use by the Division. Any vehicle seized outside of this State shall be sold as surplus property in the same manner as other vehicles owned by the law enforcement agency and the proceeds from the sale after deducting the cost of sale shall be paid to the treasurer and placed in the Civil Fines and Forfeitures Fund established pursuant to G.S. 115C-457.1. (2009-495, s. 1.)

Editor's Note. — Session Laws 2009-495, s. 2, made this section effective August 26, 2009.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. Owner to secure registration and certificate of title; temporary registration markers.

(a) A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52, and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State.

The Commissioner of Motor Vehicles or the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. When the owner of a vehicle leases the vehicle to a carrier of passengers or property and the vehicle is actually used by the carrier in the operation of its business, the license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. When the owner of a vehicle leases the vehicle to a farmer and the vehicle is actually used by the farmer in the operation of a farm, the license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require.

(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is five dollars ($5.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.

(2) It expires on midnight of the day set for expiration.

(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.

(4) If it is lost or stolen, the person who applied for it must notify the Division.

(5) It may not be issued by a dealer.

(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible. (1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1; 1973, c. 919; 1975, c. 462; c. 716, s. 5; c. 767, s. 1; 1995, c. 394, s. 1; 1999-438, s. 26; 2005-276, s. 44.1(i).)

Local Modification. — Moore: 1995, c. 13, s. 3, as amended by 2002-82, s. 2, as amended by 2005-11, s. 2; city of Conover: 2003-124, s. 1, as amended by 2004-58, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 5; town of Beech Mountain: 2003-124, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 6; town of Caswell Beach: 2006-149, s. 1.1; town of North Topsail Beach: 2003-124, s. 1, as amended by 2004-59, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 5; town of Seven Devils: 2003-124, s. 1, as amended by 2004-58, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 5.

Editor's Note. — Session Laws 2007-323, s. 27.1, provides: "The Department of Transportation, Division of Motor Vehicles, is prohibited from opening drivers license issuance and vehicle registration issuance and renewal One-Stop Shops until the General Assembly has considered and appropriated funds for the purpose of One-Stop Shops.

"The Department of Transportation shall develop a business plan that thoroughly outlines the operational plans of a combined function center, a detailed budget for each proposed location, and any identified savings gleaned from the combined services. In addition, the Division of Motor Vehicles shall conduct an analysis on the anticipated number of transactions and the impact to independent tag agents in those areas. The report is due to the Joint Legislative Transportation Oversight Committee, the Joint Appropriations Subcommittee for Transportation, and the Fiscal Research Division by March 15, 2008."

Session Laws 2007-323, ss. 27.11(a) and (b), provide: "(a) Of the funds appropriated from the Highway Fund to the Department of Transportation under this act, the Division of Motor Vehicles may expend the sum of two hundred eighty-two thousand one hundred ninety-nine dollars ($282,199) for fiscal year 2007-2008 and the sum of ninety-nine thousand dollars ($99,000) for fiscal year 2008-2009 to recall vehicle license plates. The Division shall develop a schedule by which approximately 94,000 of the oldest license plates are recalled annually for the next five years. Each fiscal year after 2008-2009, the General Assembly intends to appropriate from the Highway Fund to the Department of Transportation the sum of ninety-nine thousand dollars ($99,000) in recurring funds for the Division to implement a continuous license plate recall program.

"(b) The Division shall report to the Joint Appropriations Subcommittee on Transportation and the Fiscal Research Division no later than May 1, 2008, on the progress of the vehicle license plate recall schedule and the implementation of the continuous license plate recall program."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Legal Periodicals. — For note discussing the extension of the family purpose doctrine to motorcycles and private property, see 14 Wake Forest L. Rev. 699 (1978).

CASE NOTES

A "certificate of number" required by § 75A-5 is not a "certificate of title" to be compared with that required by this section for vehicles intended to be operated on the highways. Lane v. Honeycutt, 14 N.C. App. 436, 188 S.E.2d 604, cert. denied, 281 N.C. 622, 190 S.E.2d 466 (1972).

As to the applicability of the mandatory provisions of motor vehicles to mobile homes, see King Homes, Inc. v. Bryson, 273 N.C. 84, 159 S.E.2d 329 (1968).

Registration and Certificate of Title Not Required. — Where purchaser of real property did not need to transport permanently attached mobile home along the highways and had no intention of doing so, purchaser was not required to register the mobile home nor to obtain a certificate of title; the mobile home was permanently affixed to the land when the property was deeded to the debtors and all parties intended the transaction to be one involving the sale of real property. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Reasonable Suspicion Vehicle Did Not Have Proper Registration Tag. — Officer possessed reasonable suspicion to believe that defendant was operating defendant's vehicle without a proper registration tag because the tag displayed was just a piece of paper with a date written on it, rather than the piece of cardboard that car dealers normally hand out when a vehicle is purchased. State v. Smith, — N.C. App. —, 666 S.E.2d 191, 2008 N.C. App. LEXIS 1661 (2008).

For comparison of mortgage registration statute with prior similar statute, see Carolina Disct. Corp. v. Landis Motor Co., 190 N.C. 157, 129 S.E. 414 (1925).

Modular Homes. — Although the title to a modular home is initially acquired through a bill of sale, once installed title must pass by way of a real property deed unlike a mobile home or trailer which passes by transfer of a certificate of origin and motor vehicle title. Briggs v. Rankin, 127 N.C. App. 477, 491 S.E.2d 234 (1997), aff'd, 348 N.C. 686, 500 S.E.2d 663 (1998).

Applied in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953).

Cited in Southern Auto Fin. Co. v. Pittman, 253 N.C. 550, 117 S.E.2d 423 (1960); Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962); Pilot Freight Carriers, Inc. v. Scheidt, 263 N.C. 737, 140 S.E.2d 383 (1965); State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968); Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970); United States v. Powers, 439 F.2d 373 (4th Cir. 1971); Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972); Williams v. Wachovia Bank & Trust Co., 292 N.C. 416, 233 S.E.2d 589 (1977); BarclaysAmerican/Credit Co. v. Riddle, 57 N.C. App. 662, 292 S.E.2d 177 (1982); Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251 (1991); State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991); Butler v. Green Tree Fin. Servicing Corp. (In re Wester), 229 Bankr. 348 (Bankr. E.D.N.C. 1998).

OPINIONS OF ATTORNEY GENERAL

This section requires the owner of a motor vehicle to register the vehicle and obtain a certificate of title from the Department (now Division) of Motor Vehicles. See opinion of Attorney General to Mr. Eric L. Gooch, Director, Sales and Use Tax Division, North Carolina Department of Revenue, 40 N.C.A.G. 446 (1969).

§ 20-50.1: Repealed by Session Laws 1979, c. 574, s. 5.

Cross References. — For present provisions covering the subject matter of the repealed section, see G.S. 20-51, subdivision (9).

§ 20-50.2: Repealed by Session Laws 1991, c. 624, s. 4.

§ 20-50.3. (For contingent repeal, see note) Division to furnish county assessors registration lists.

On the tenth day of each month the Division shall send to each county assessor a list of vehicles registered under the staggered system for which registration was renewed or a new registration was obtained in that county during the second month preceding that date, with the name and address of each vehicle owner. On the tenth day of March the Division shall send to each county assessor a list of the following vehicles registered under the annual system with the name and address of each vehicle owner:

(1) Vehicles for which registration was renewed in that county during the period beginning the preceding December 1.

(2) Vehicles for which a new registration was obtained in that county during the preceding December. (1991, c. 624, s. 5; 1991 (Reg. Sess., 1992), c. 961, s. 11; 2005-294, s. 10; 2006-259, s. 31.5; 2007-527, s. 22(b).)

Contingent repeal of this section. — Session Laws 2005-294, s. 10, repeals this section. Session Laws 2005-294, s. 13, as amended by Session Laws 2006-259, s. 31.5, as amended by Session Laws 2007-527, s. 22(b), makes it effective July 1, 2010, provides in part that section 10 of the act becomes effective "July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

Editor's Note. — Session Laws 2005-294, s. 12, effective August 22, 2005, provides, in part: "The Property Tax Division within the Department of Revenue and the Division of Motor Vehicles within the Department of Transportation shall jointly study and develop a plan for determining the method of valuation of motor vehicles to be taxed and for implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the State. The Divisions shall consult with representatives from the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Association of Assessing Officers, the North Carolina Automobile Dealers Association, the North Carolina Independent Automobile Dealers Association, and the North Carolina Tax Collectors Association. The Divisions shall submit a report of its findings and recommendations to the Revenue Laws Study Committee, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division by April 30, 2006."

Session Laws 2005-294, s. 13, as amended by Session Laws 2006-259, s. 31.5, as amended by 2007-527, s. 22(b), provides: "Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10, and 11 of this act become effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

§ 20-50.4. (For expiration date, see note) Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.

(a) Delinquent Property Taxes. — Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until either the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused or the county certifies to the Division that the tax has been paid. The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred or the county certifies to the Division that the tax has been paid. The certification must be in the form and contain the information required by the Division.

(b) Delinquent Child Support Obligations. — Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent. (1991, c. 624, s. 5; 1995, c. 538, s. 2(g); 1995 (Reg. Sess., 1996), c. 741, ss. 1, 2.)

Section Set Out Twice. — The section above is effective until July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration, renewal and property tax collection for motor vehicles is in operation, whichever occurs first. For the section as contingently effective July 1, 2010, see the following section, also numbered G.S. 20-50.4. See Editor's note.

Editor's Note. — Session Laws 2005-294, s. 13, as amended by Session Laws 2006-259, s. 31.5, as amended by 2007-527, s. 22(b), provides that: "Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10, and 11 of this act become effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

§ 20-50.4. (For effective date, see note) Division to refuse to register vehicles on which county and municipal taxes and fees are not paid and when there is a failure to meet court-ordered child support obligations.

(a) Property Taxes Paid with Registration. — The Division shall refuse to register a vehicle on which county and municipal taxes and fees have not been paid.

(b) Delinquent Child Support Obligations. — Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent. (1991, c. 624, s. 5; 1995, c. 538, s. 2(g); 1995 (Reg. Sess., 1996), c. 741, ss. 1, 2; 2005-294, s. 11; 2006-259, s. 31.5; 2007-527, s. 22(b).)

Section Set Out Twice. — The section above is contingently effective July 1, 2010. For the section as in effect until July 1, 2010, see the preceding section also numbered G.S. 20-50.4. See Editor's note.

Editor's Note. — Session Laws 2005-294, s. 13, as amended by Session Laws 2006-259, s. 31.5, as amended by 2007-527, s. 22(b), provides that "Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10, and 11 of this act become effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

Session Laws 2005-294, s. 12, effective August 22, 2005, provides: "The Property Tax Division within the Department of Revenue and the Division of Motor Vehicles within the Department of Transportation shall jointly study and develop a plan for determining the method of valuation of motor vehicles to be taxed and for implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the State. The Divisions shall consult with representatives from the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Association of Assessing Officers, the North Carolina Automobile Dealers Association, the North Carolina Independent Automobile Dealers Association, and the North Carolina Tax Collectors Association. The Divisions shall submit a report of its findings and recommendations to the Revenue Laws Study Committee, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division by April 30, 2006."

Effect of Amendments. — Session Laws 2005-294, s. 11, in the section heading, substituted "county and municipal taxes and fees are not paid" for "taxes are delinquent" and rewrote subsection (a). For effective date, see Editor's note.

§ 20-51. Exempt from registration.

The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, all vegetables, fruits, greenhouse and nursery plants and flowers, Christmas trees, fertilizers or chemicals purchased or owned by the farmer or tenant for personal use in implementing husbandry, irrigation pipes, loaders, or equipment owned by the farmer or tenant from place to place on the same farm,

from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing.

(9) Mopeds as defined in G.S. 20-4.01(27)d1.

(10) Devices which are designed for towing private passenger motor vehicles or vehicles not exceeding 5,000 pounds gross weight. These devices are known generally as "tow dollies." A tow dolly is a two-wheeled device without motive power designed for towing disabled motor vehicles and is drawn by a motor vehicle in the same manner as a trailer.

(11) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer to a full trailer for the purpose of being drawn behind a truck tractor and semitrailer.

(12) Motorized wheelchairs or similar vehicles not exceeding 1,000 pounds gross weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in G.S. 20-37.5.

(13) Any vehicle registered in another state and operated temporarily within this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage.

(14) Electric personal assistive mobility devices as defined in G.S. 20-4.01(7a).

(15) Any vehicle that meets all of the following:
   a. Is designed for use in work off the highway.
   b. Is used for agricultural quarantine programs under the supervision of the Department of Agriculture and Consumer Services.
   c. Is driven or moved on the highway for the purpose of going to and from nonhighway projects.
   d. Is identified in a manner approved by the Division of Motor Vehicles.
   e. Is operated by a person who possesses an identification card issued by the Department of Agriculture and Consumer Services.

(16) A vehicle that meets all of the following conditions is exempt from the requirement of registration and certificate of title. The provisions of G.S. 105-449.117 continue to apply to the vehicle and to the person in whose name the vehicle would be registered.
   a. Is an agricultural spreader vehicle. An "agricultural spreader vehicle" is a vehicle that is designed for off-highway use on a farm to spread fertilizer, seed, lime, or other agricultural products on a field.
   b. Is driven on the highway only for the purpose of going from the location of its supply source for fertilizer or other products to and from a farm.
   c. Does not exceed a speed of 35 miles per hour.

d. Does not drive outside a radius of 50 miles from the location of its supply source for fertilizer and other products.
e. Is driven by a person who has a license appropriate for the class of the vehicle.
f. Is insured under a motor vehicle liability policy in the amount required under G.S. 20-309.
g. Displays a valid federal safety inspection decal if the vehicle has a gross vehicle weight rating of at least 10,001 pounds. (1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146; 1971, c. 107; 1973, cc. 478, 757, 964; 1979, c. 574, s. 6; 1981 (Reg. Sess., 1982), c. 1286; 1983, cc. 288, 732; 1987, c. 608; 1989, c. 157, s. 2; 1991, c. 411, s. 4; 1995, c. 50, s. 4; 1999-281, s. 2; 2002-98, s. 4; 2002-150, s. 1; 2006-135, s. 2; 2007-194, s. 1; 2007-527, s. 41.)

Cross References. — As to manufacturers and dealers, see G.S. 20-79. As to nonresidents, see G.S. 20-83.

Editor's Note. — The number of subdivision (15) was designated as such by the Revisor of Statutes, the number in Session Laws 2002-150, s. 1, having been (14).

CASE NOTES

Farm tractors are not to be considered motor vehicles within the statute relating to registration and certificates of titles of motor vehicles. Brown v. Fidelity & Cas. Co., 241 N.C. 666, 86 S.E.2d 433 (1955).

Cited in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953); Butler v. Green Tree Fin. Servicing Corp. (In re Wester), 229 Bankr. 348 (Bankr. E.D.N.C. 1998).

§ 20-52. Application for registration and certificate of title.

(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application provided by the Division. The application must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.
(1a) If the owner is an individual, the following information:
  a. The owner's mailing address and residence address.
  b. One of the following at the option of the applicant:
    1. The owner's North Carolina drivers license number or North Carolina special identification card number.
    2. The owner's home state drivers license number or home state special identification card number and valid active duty military identification card number or military dependent identification card number if the owner is a person or the spouse or dependent child of a person on active duty in the Armed Forces of the United States who is stationed in this State or deployed outside this State from a home base in this State. The owner's inability to provide a photocopy or reproduction of a military or military dependent identification card pursuant to any prohibition of the United States government or any agency thereof against the making of such photocopy or reproduction shall not operate to prevent the owner from making an application for registration and certificate of title pursuant to this subdivision.

3. The owner's home state drivers license number or home state special identification card number and proof of enrollment in a school in this State if the owner is a permanent resident of another state but is currently enrolled in a school in this State.
4. The owner's home state drivers license number or home state special identification card number if the owner provides a signed affidavit certifying that the owner intends to principally garage the vehicle in this State and provides the address where the vehicle is or will be principally garaged. For purposes of this section, "principally garage" means the vehicle is garaged for six or more months of the year on property in this State which is owned, leased, or otherwise lawfully occupied by the owner of the vehicle.
5. The owner's home state drivers license number or home state special identification card number, provided that the application is made pursuant to a court authorized sale or a sale authorized by G.S. 44A-4 for the purpose of issuing a title to be registered in another state or country.
6. The co-owner's home state drivers license number or home state special identification card number if at least one co-owner provides a North Carolina drivers license number or North Carolina special identification number.
7. The owner's home state drivers license number or special identification card number if the application is for a motor home or house car, as defined in G.S. 20-4.01(27)d2., or for a house trailer, as defined in G.S. 20-4.01(14).

(1b) If the owner is a firm, partnership, a corporation, or another entity, the address of the entity.

(2) A description of the vehicle, including the following:
  a. The make, model, type of body, and vehicle identification number of the vehicle.
  b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

(4) A statement that the owner is an eligible risk for insurance coverage as defined in G.S. 58-37-1(4a).

(5) For registration and certificate of title for a nonfleet private passenger motor vehicle, a statement that providing incorrect or false and misleading information as to the owner's status as an eligible risk can result in criminal prosecution and the denial of insurance coverage for any loss of the owner under any insurance policies for which application is made if the owner provides false and misleading information as to eligible risk status.

(6) For registration and certificate of title for a nonfleet private passenger motor vehicle, a statement that the owner will inform the insurer before the next policy renewal if the owner ceases to be an eligible risk.

(a1) An owner who would otherwise be capable of attaining a drivers license or special identification card from this State or any other state, except for a medical or physical condition that can be documented to, and verified by, the Division, shall be issued a registration plate and certificate of title if the owner provides a signed affidavit certifying that the owner intends to principally garage the vehicle in this State and provides the address where the vehicle is or will be principally garaged.

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer. (1937, c. 407, s. 17; 1961, c. 835, ss. 2, 3; 1975, c. 716, s. 5; 1991, c. 183, s. 2; 1993 (Reg. Sess., 1994), c. 750, s. 5; 2007-164, s. 4; 2007-209, ss. 1, 2; 2007-443, s. 6; 2007-481, ss. 4-7; 2008-124, s. 4.1; 2009-274, s. 4.)

Editor's Note. — Session Laws 2007-164, s. 4, which amended subdivision (a)(1a)b by substituting "North Carolina drivers license number or North Carolina special identification card number" for "social security number," was repealed by Session Laws 2007-209, s. 1.

Session Laws 2007-209, s. 2, which amended identification card and social security number provisions in subsection (a), was repealed by Session Laws 2007-481, s. 4.

Session Laws 2007-443, s. 6, which amended subsection (a), was repealed by Session Laws 2007-481, s. 6.

Session Laws 2007-209, s. 3, provides: "Notwithstanding G.S. 20-58.2, any application for notation of security interest which had been completed but not yet submitted to or processed by the Division by the effective date of this act by reason of the fact that one or more owners failed to possess a North Carolina drivers license or North Carolina special identification card, as required by Section 4 of S.L. 2007-164, shall be deemed perfected as of the date of the execution of the security agreement provided that the application is delivered to the Division along with the required fee within 20 days of the effective date of this act."

Session Laws 2007-209, s. 4, provides: "The time limit provisions set forth in G.S. 20-73(a) and the penalties provided in G.S. 20-73(c) shall not apply to any completed application which had not yet been submitted to or processed by the Division by the effective date of this act by reason of the fact that one or more owners failed to possess a North Carolina drivers license or North Carolina special identification card, as required by Section 4 of S.L. 2007-164, provided that the requirements of G.S. 20-73 are met within 28 days of the effective date of this act."

Session Laws 2007-209, s. 5, provides in part: "Sections 1, 3, and 4 of this act are effective when they become law and apply to applications for registration and certificate of title made on or after that date. Sections 1, 3, and 4 of this act shall also apply to any certificate of title, registration plate, registration card, or notation of security interest application which had been completed but not yet submitted to or processed by the Division by the effective date of this act."

Session Laws 2007-481, s. 9, provides in part: "Section 5 of this act becomes effective September 15, 2007, and applies to applications for registration and certificate of title made on or after that date but shall not apply to any application that had been complete and notarized but not yet submitted to or processed by the Division prior to September 15, 2007. Sections 6, 7, and 8 of this act become effective January 1, 2008."

Session Laws 2008-124, s. 11.1 is a severability clause.

Effect of Amendments. — Session Laws 2007-481, s. 5, deleted "form" following "application" both times it appears in the introductory paragraph of subsection (a); rewrote subdivision (a)(1a)b; deleted the former last paragraph of subsection (a), which provided that an application form must contain certain disclosures; and added subsection (a1). For effective dates and applicability, see Editor's note.

Session Laws 2007-481, s. 7, effective January 1, 2008, added subdivisions (a)(4) through (a)(6).

Session Laws 2008-124, s. 4.1, effective July 28, 2008, substituted "G.S. 58-37-1(4a)" for "G.S. 58-37-1" in subdivision (a)(4).

Session Laws 2009-274, s. 4, effective July 10, 2009, and applicable to all licenses expiring on or after that date, substituted "Armed Forces" for "armed forces" in the first sentence of subdivision (a)(1a)b.2.

CASE NOTES

A mobile home is a motor vehicle, and is subject to the mandatory provisions of the statutes relating to the registration of motor vehicles in this State. King Homes, Inc. v. Bryson, 273 N.C. 84, 159 S.E.2d 329 (1968).

Duty of Care of Lienholder. — Trial court did not err in dismissing counterclaim based on defendants' contention that because lienholder controlled the processes of perfecting its security interest and obtaining the certificate of title, it owed the debtor-purchaser a duty of care with regard to completing these matters, as defendants did not establish the existence of a duty of care owed to them by plaintiff on the basis of statute. NCNB Nat'l Bank v. Gutridge, 94 N.C. App. 344, 380 S.E.2d 408, cert. denied, 325 N.C. 432, 384 S.E.2d 539 (1989).

Applied in State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983).

Cited in Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962); Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972); Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251 (1991).

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

(a) Any manufacturer transferring a new motor vehicle to another shall, at the time of the transfer, supply the transferee with a manufacturer's certificate of origin assigned to the transferee.

(b) Any dealer transferring a new vehicle to another dealer shall, at the time of transfer, give such transferee the proper manufacturer's certificate assigned to the transferee.

(c) Upon sale of a new vehicle by a dealer to a consumer-purchaser, the dealer shall execute in the presence of a person authorized to administer oaths an assignment of the manufacturer's certificate of origin for the vehicle, including in such assignment the name and address of the transferee and no title to a new motor vehicle acquired by a dealer under the provisions of subsections (a) and (b) of this section shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

Any dealer transferring title to, or an interest in, a new vehicle shall deliver the manufacturer's certificate of origin duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the manufacturer's certificate of origin to the lienholder and the lienholder shall forthwith forward the manufacturer's certificate of origin together with the transferee's application for certificate of title and necessary fees to the Division. Any person who delivers or accepts a manufacturer's certificate of origin assigned in blank shall be guilty of a Class 2 misdemeanor, unless done in accordance with subsection (d) of this section.

(d) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer title to another by certifying in writing in a sworn statement to the Division that all prior perfected liens on the vehicle have been paid and that the motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title. The Division is authorized to develop a form for this purpose. The filing of a false sworn certification with the Division pursuant to this subsection shall constitute a Class H felony. The dealer shall hold harmless the consumer-purchaser from any damages arising from the use of the procedure authorized by this subsection. (1961, c. 835, s. 4; 1967, c. 863; 1975, c. 716, s. 5; 1993, c. 539, s. 331; 1994, Ex. Sess., c. 24, s. 14(c); 2000-182, s. 1.)

Legal Periodicals. — For 1984 survey, "The Application of the North Carolina Motor Vehicle Act and the Uniform Commercial Code to the Sale of Motor Vehicles by Consignment," see 63 N.C.L. Rev. 1105 (1985).

For note on the conflict between the North Carolina Motor Vehicle Act and the UCC, see 65 N.C.L. Rev. 1156 (1987).

CASE NOTES

A mobile home is a motor vehicle, and is subject to the mandatory provisions of the statutes relating to the registration of motor vehicles in this State. King Homes, Inc. v. Bryson, 273 N.C. 84, 159 S.E.2d 329 (1968).

This section is one segment of an entire statutory scheme of police regulations designed and intended to provide a simple expeditious mode of tracing titles to motor vehicles so as to (1) facilitate the enforcement of the highway safety statutes, (2) minimize the hazards of theft, and (3) provide safeguards against fraud, imposition, and sharp practices in connection with the sale and transfer of motor vehicles. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

This section was designed for the protection of the public generally, to regulate the transfer of new motor vehicles from manufacturers to dealers and, ultimately, to consumers. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

This section was not designed to provide a method for manufacturers to protect themselves against their dealers' defaults by withholding manufacturer's statements of origin on vehicles transferred to dealers for ultimate sale to consumers. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

Subsection (a) of this section is not permissive. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

Duty of Care of Lienholder. — Trial court did not err in dismissing counterclaim based on defendants' contention that because lienholder controlled the processes of perfecting its security interest and obtaining the certificate of title, it owed the debtor-purchaser a duty of care with regard to completing these matters, as defendants did not establish the existence of a duty of care owed to them by plaintiff on the basis of statute. NCNB Nat'l Bank v. Gutridge, 94 N.C. App. 344, 380 S.E.2d 408, cert. denied, 325 N.C. 432, 384 S.E.2d 539 (1989).

Cited in Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.

(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Division all registration cards, certificates of title or notarized copies of original titles on vehicles 35 model years old and older, or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof. After initial review, the Division shall return to the owner any original titles presented on vehicles 35 model years old and older appropriately marked indicating that the title has been previously submitted.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the Division in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d) Repealed by Session Laws 1965, c. 734, s. 2.

(e) No title shall be issued to an initial applicant for (i) out-of-state vehicles that are 35 model years old or older or (ii) a specially constructed vehicle prior to the completion of a vehicle verification conducted by the License and Theft Bureau of the Division of Motor Vehicles. These verifications shall be conducted as soon as practical. For an out-of-state vehicle that is 35 model years old or older, this inspection shall consist of verifying the public vehicle identification number to ensure that it matches the vehicle and ownership documents. No covert vehicle identification numbers are to be examined on an out-of-state vehicle 35 model years or older unless the inspector develops probable cause to believe that the ownership documents or public vehicle identification number presented does not match the vehicle being examined. However, upon such application and the submission of any required documentation, the Division shall be authorized to register the vehicle pending the completion of the verification of the vehicle. The registration shall be valid for one year but shall not be renewed unless and until the vehicle examination has been completed.

(f) If a vehicle owner desires a vehicle title classification change, he or she may, upon proper application, be eligible for a reclassification. (1937, c. 407, s. 18; 1949, c. 675; 1953, c. 853; 1957, c. 1355; 1965, c. 734, s. 2; 1975, c. 716, s. 5; 2009-405, s. 5.)

Effect of Amendments. — Session Laws 2009-405, s. 5, effective August 5, 2009, in subsection (a), inserted "or notarized copies of original titles on vehicles 35 model years old and older," made a related change and added the last sentence; and added subsections (e) and (f).

Legal Periodicals. — For comment on former subsection (c) of this section, see 27 N.C.L. Rev. 471 (1949).

§ 20-53.1. Specially constructed vehicle certificate of title and registration.

(a) Specially constructed vehicles shall be titled in the following manner:

(1) Replica vehicles shall be titled as the year, make, and model of the vehicle intended to be replicated. A label of "Replica" shall be applied to the title and registration card. All replica vehicle titles shall be labeled "Specially Constructed Vehicle."

(2) The model year of a street rod vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with a label of "Street Rod" applied to the title and registration card. All street rod vehicle titles shall be labeled "Specially Constructed Vehicle."

(3) Custom-built vehicles shall be titled and registered showing the make as "Custom-built," and the year the vehicle was built shall be the vehicle model year. All custom-built vehicle titles shall be labeled "Specially Constructed Vehicle."

(b) Inoperable vehicles may be titled, but no registration may be issued until such time as the License and Theft Bureau inspects the vehicle to ensure it is substantially assembled. Once a vehicle has been verified as substantially assembled pursuant to an inspection by the License and Theft Bureau, the Commissioner shall title the vehicle by classifying it in the proper category and collecting all highway use taxes applicable to the value of the car at the time the vehicle is retitled to a proper classification, as described in this section.

(c) Motor vehicle certificates of title and registration cards issued pursuant to this section shall be labeled in accordance with this section. As used in this section, "labeled" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Specially constructed vehicle.

(2) Inoperable vehicle. (2009-405, s. 2.)

Editor's Note. — Session Laws 2009-405, s. 7, made this section effective October 1, 2009.

§ 20-53.2: Reserved for future codification purposes.

§ 20-53.3. Appeal of specially constructed vehicle classification determination to Vehicle Classification Review Committee.

(a) Any person aggrieved by the Division's determination of the appropriate vehicle classification for a specially constructed vehicle may request review of that determination by the Vehicle Classification Review Committee. This review shall be initiated by completing a Vehicle Classification Review Request and returning the request to the Division. The Vehicle Classification Review Request shall be made on a form provided by the Division. The decision of the Review Committee may be appealed to the Commissioner of Motor Vehicles.

(b) The Vehicle Classification Review Committee shall consist of five members as follows:

(1) Two members shall be personnel of the License and Theft Bureau of the Division of Motor Vehicles appointed by the Commissioner.
(2) One member shall be a member of the public with expertise in antique or specially constructed vehicles appointed by the Commissioner from a list of nominees provided by the Antique Automobile Club of America.
(3) One member shall be a member of the public with expertise in antique or specially constructed vehicles appointed by the Commissioner from a list of nominees provided by the Specialty Equipment Market Association.
(4) One member shall be a member of the public with expertise in antique or specially constructed vehicles appointed by the Commissioner from a list of nominees provided by the National Corvette Restorers Society.

(c) Members of the Vehicle Classification Review Committee shall serve staggered two-year terms. Initial appointments shall be made on or before October 1, 2009. The initial appointment of one of the members from the License and Theft Bureau and the member nominated by the Antique Automobile Club of America shall be for one year. The initial appointments of the remaining members shall be for two years. At the expiration of these initial terms, appointments shall be for two years. A member of the Committee may be removed at any time by unanimous vote of the remaining four members. Vacancies shall be filled in the manner set out in subsection (b) of this section. (2009-405, s. 6.)

Editor's Note. — Session Laws 2009-405, s. 7, made this section effective October 1, 2009.

§ 20-54. Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.
(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.
(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the

rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State, except in such cases to abide by the ignition interlock installation requirements of G.S. 20-17.8.

(5) The required fee has not been paid, including any additional registration fees or taxes due pursuant to G.S. 20-91(c).

(6) The vehicle is not in compliance with the inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture.

(8) The vehicle is a golf cart or utility vehicle.

(9) The applicant motor carrier is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1).

(10) **(Effective January 1, 2011)** The North Carolina Turnpike Authority has notified the Division that the owner of the vehicle has not paid the amount of tolls, fees, and civil penalties the owner owes the Authority for use of a Turnpike project. (1937, c. 407, s. 19; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 7; 1998-182, s. 9; 2001-356, s. 3; 2002-152, s. 1; 2007-164, s. 5; 2008-225, s. 7; 2009-319, s. 1.)

Local Modification. — Moore: 1995, c. 13, s. 3, as amended by 2002-82, s. 2, as amended by 2005-11, s. 2; city of Conover: 2003-124, s. 1, as amended by 2004-58, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 5; town of Beech Mountain: 2003-124, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 6; town of Caswell Beach: 2006-149, s. 1.1; town of North Topsail Beach: 2003-124, s. 1, as amended by 2004-59, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 5; town of Seven Devils: 2003-124, s. 1, as amended by 2004-58, s. 1, as amended by 2007-204, s. 1, as amended by 2007-259, s. 1, as amended by 2009-459, s. 5.

Cross References. — As to fees, see G.S. 20-85.

Editor's Note. — Session Laws 2002-152, s. 6, provides: "The Division shall adopt rules to implement the provisions of this act."

Effect of Amendments. — Session Laws 2008-225, s. 7, effective January 1, 2011, added subdivision (10).

Session Laws 2009-319, s. 1, effective July 17, 2009, deleted "emissions" preceding "inspection" in subdivision (6).

§ 20-54.1. Forfeiture of right of registration.

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored, except in such cases to abide by the ignition interlock installation requirements of G.S. 20-17.8. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized, and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice. (1998-182, s. 10; 2007-164, s. 6.)

§ 20-55. Examination of registration records and index of seized, stolen, and recovered vehicles.

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of seized, stolen and recovered motor vehicles required to be maintained by this Article. (1937, c. 407, s. 20; 1971, c. 1070, s. 2; 1975, c. 716, s. 5; 1998-182, s. 11.)

§ 20-56. Registration indexes.

(a) The Division shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof as follows:

(1) Under a distinctive registration number assigned to the vehicle;
(2) Alphabetically, under the name of the owner;
(3) Under the motor number or any other identifying number of the vehicle; and
(4) In the discretion of the Division, in any other manner it may deem advisable.

(b) Repealed by Session Laws 2001, c. 424, s. 6.14(g), effective September 26, 2001. (1937, c. 407, s. 201/2; 1949, c. 583, s. 5; 1971, c. 1070, s. 3; 1975, c. 716, s. 5; 1991, c. 53, s. 2; 2001-424, s. 6.14(g).)

Cross References. — For requirements regarding marking and issuance of license plates for publicly owned vehicles, see G.S. 20-39.1.

CASE NOTES

Cited in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953).

§ 20-57. Division to issue certificate of title and registration card.

(a) The Division upon registering a vehicle shall issue a registration card and a certificate of title as separate documents.

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for the owner's signature, the registration number assigned to the vehicle, and a description of the vehicle as determined by the Commissioner, provided that if there are more than two owners the Division may show only two owners on the registration card and indicate that additional owners exist by placing after the names listed "et al." An owner may obtain a copy of a registration card issued in the owner's name by applying to the Division for a copy and paying the fee set in G.S. 20-85.

(c) Every owner upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or in the vehicle to which transfer is being effected, as provided by G.S. 20-64 at the time of its operation, and such registration card shall be displayed upon demand of any peace officer or any officer of the Division: Provided, however, any person charged with failing to so carry such registration card shall not be convicted if he produces in court a registration card theretofore issued to him and valid at the time of his arrest: Provided further, that in case of a transfer of a license plate from one vehicle to another under the provisions of G.S. 20-72, evidence of application for transfer shall be carried in the vehicle in lieu of the registration card.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card except the abbreviation "et al." if such appears and in addition thereto the name of all owners, the date of issuance and all liens or encumbrances disclosed in the application for title. All such liens or encumbrances shall be shown in the order of their priority, according to the information contained in such application.

(e) The certificate of title shall contain upon the reverse side an assignment of title or interest and warranty by registered owner or registered dealer. The purchaser's application for North Carolina certificate of title shall be made on a form prescribed by the Commissioner and shall include a space for notation of liens and encumbrances on the vehicle at the time of transfer.

(f) Certificates of title upon which liens or encumbrances are shown shall be delivered or mailed by the Division to the holder of the first lien or encumbrance.

(g) Certificates of title shall bear thereon the seal of the Division.

(h) Certificates of title need not be renewed annually, but shall remain valid until canceled by the Division for cause or upon a transfer of any interest shown therein. (1937, c. 407, s. 21; 1943, c. 715; 1961, c. 360, s. 2; c. 835, s. 5; 1963, c. 552, s. 2; 1973, c. 72; c. 764, ss. 1-3; c. 1118; 1975, c. 716, s. 5; 1979, c. 139; 1981, c. 690, s. 20; 1983, c. 252; 1991, c. 193, s. 7.)

Cross References. — As to authority for consumer finance licensee under Article 15 of Chapter 53 to collect from borrower recording fees required pursuant to G.S. 20-58 et seq., see G.S. 53-177.

Legal Periodicals. — For survey of 1980 commercial law, see 59 N.C.L. Rev. 1079 (1981).

CASE NOTES

Application. — While G.S. 20-57 is intended to govern a situation in which there is only one owner at issue, the party registering the vehicle, G.S. 20-72(b) is intended to govern a situation in which an ownership interest is being transferred between two parties. Batts v. Lumbermen's Mut. Cas. Ins. Co., — N.C. App. —, 665 S.E.2d 578, 2008 N.C. App. LEXIS 1613 (2008).

Applied in Oroweat Employees Credit Union v. Stroupe, 48 N.C. App. 338, 269 S.E.2d 211 (1980).

Cited in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953); Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962); State v. Green, 103 N.C. App. 38, 404 S.E.2d 363 (1991); Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251 (1991); State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991); State

v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

§ 20-58. Perfection by indication of security interest on certificate of title.

(a) Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

(1) If the vehicle is not registered in this State, the application for notation of a security interest shall be the application for certificate of title provided for in G.S. 20-52.

(2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Division, signed by the debtor, and contain the date of application of each security interest, and name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition contain the name and address of such prior secured party. An application for notation of a security interest may be signed by the secured party instead of the debtor when the application is accompanied by documentary evidence of the applicant's security interest in that motor vehicle signed by the debtor and by affidavit of the applicant stating the reason the debtor did not sign the application. In the event the certificate cannot be obtained for recordation of the security interest, when title remains in the name of the debtor, the Division shall cancel the certificate and issue a new certificate of title listing all the respective security interests.

(3) If the application for notation of security interest is made in order to continue the perfection of a security interest perfected in another jurisdiction, it may be signed by the secured party instead of the debtor. Such application shall be accompanied by documentary evidence of a perfected security interest. No such application shall be valid unless an application for a certificate of title has been made in North Carolina. The security interest perfected herein shall be subject to the provisions set forth in G.S. 20-58.5.

(b) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a first lienholder who holds a valid license as a motor vehicle dealer issued by the Commissioner under Article 12 of this Chapter or his designee may file a notarized copy of an instrument creating and evidencing a security interest in the motor vehicle with the Division of Motor Vehicles. A filing pursuant to this subsection shall constitute constructive notice to all persons of the security interest in the motor vehicle described in the filing. The constructive notice shall be effective from the date of the filing if the filing is made within 20 days after the date of the security agreement. The constructive notice shall date from the date of the filing with the Division if it is made more than 20 days after the date of the security agreement. The notation of a security interest created under this subsection shall automatically expire 60 days after the date of the creation of the security interest, or upon perfection of the security interest as provided in subsection (a) of this section, whichever occurs first. A security interest notation made under this subsection and then later perfected under subsection (a) of this section shall be presumed to have been perfected on the date of the earlier filing. The Division may charge a fee not to exceed ten dollars ($10.00) for each notation of security interest filed pursuant to this subsection. The fee shall be credited to the Highway Fund. A false filing with the Division pursuant to this subsection shall constitute a Class H felony. (1937, c. 407, s. 22; 1955, c. 554, s. 2; 1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5; 1979, c. 145, ss. 1, 2; c. 199; 2000-182, s. 2.)

Legal Periodicals. — For case law survey as to credit transactions, see 44 N.C.L. Rev. 956 (1966).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under this section prior to the 1969 revision of G.S. 20-58 through 20-58.8.*

Legislative Intent Regarding Security Interest in Mobile Home. — The legislature intended that this section provide the exclusive method for a first mortgagee to perfect a security interest in a mobile home. Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251, cert. denied, 330 N.C. 197, 412 S.E.2d 59 (1991).

Purpose. — The manifest purpose of this and the following sections is to provide notice by recording the security interest on the certificate of title. Ferguson v. Morgan, 14 N.C. App. 520, 188 S.E.2d 672, rev'd on other grounds, 282 N.C. 83, 191 S.E.2d 817 (1972).

Scope. — With reference to vehicles subject to registration with the Division of Motor Vehicles, the provisions of G.S. 20-58 et seq. are the exclusive statutory authority governing the perfecting of security interests in motor vehicles. In re Holder, 94 Bankr. 395 (Bankr. M.D.N.C. 1988), aff'd, 892 F.2d 29 (1989).

Sale Contemplating Regular Use Subjects Vehicle to Statute. — Once a sale of an automobile has occurred contemplating regular use, whether it be a sale of a complete or limited interest, the vehicle is then subject to North Carolina's certificate of title statute, G.S. 20-58 et seq. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Provisions of the Uniform Commercial Code as to the place for filing financing statements have no application to vehicles subject to registration with the Department (now Division) of Motor Vehicles. Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

Recordation on Certificate of Title Required. — Security interests in vehicles requiring registration and certificates of title may be perfected only if recorded on the certificate of title. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Recordation of Lien in County of Residence Unnecessary. — It is no longer necessary to record the mortgage or other lien on vehicles required to be registered under the State motor vehicle laws in the county where the debtor resides. Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

The certificate of title issued by the Department (now Division) now fixes the priority of liens. It is no longer necessary to record the mortgage or other lien in the county where the debtor resides. Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).

Pledge Not Prohibited. — No language of the 1961 act amending this section expressly prohibited the creation of a pledge. Wachovia Bank & Trust Co. v. Wayne Fin. Co., 262 N.C. 711, 138 S.E.2d 481 (1964).

The legislature did not intend to prevent a mortgagee with actual possession from acquiring a lien having priority over liens not then perfected. Wachovia Bank & Trust Co. v. Wayne Fin. Co., 262 N.C. 711, 138 S.E.2d 481 (1964).

Duty of Care of Lienholder. — Trial court did not err in dismissing counterclaim based on defendants' contention that because lienholder controlled the processes of perfecting its security interest and obtaining the certificate of title, it owed the debtor-purchaser a duty of care with regard to completing these matters, as defendants did not establish the existence of a duty of care owed to them by plaintiff on the basis of statute. NCNB Nat'l Bank v. Gutridge, 94 N.C. App. 344, 380 S.E.2d 408, cert. denied, 325 N.C. 432, 384 S.E.2d 539 (1989).

Perfection of Federal Tax Lien on Motor Vehicle. — While the normal method for recording a lien on a motor vehicle is to record it on the certificate of title, G.S. 20-58.8(b)(2) makes that method of perfecting a lien expressly inapplicable to federal tax liens. In re Williams, 109 Bankr. 179 (Bankr. W.D.N.C. 1989).

A federal tax lien attaches to all real and personal property of the debtors pursuant to federal law, and is perfected by the filing of a notice of tax lien. Where that was accomplished in accordance with federal regulation and G.S. 44-68.1(b)(2) (see now G.S. 44-68.10 et seq.), the IRS lien attached to and was secured by debtors' automobiles, regardless of the fact that no lien was noted on the automobiles' titles. In re Williams, 109 Bankr. 179 (Bankr. W.D.N.C. 1989).

Failure to Properly Effect Security Interest. — Debtor was the owner of the automobile at issue and the creditor did not retain an ownership interest, only a security interest in the vehicle, when the debtor and the creditor entered into a promissory note and security agreement whereby the debtor agreed to purchase the automobile; however, because the creditor failed to properly perfect the security interest in the vehicle under G.S. 20-58, the trustee's interest was superior pursuant to 11 U.S.C. § 544. Ivey v. Wilson (In re Payne), — Bankr. —, 2006 Bankr. LEXIS 4199 (Bankr. M.D.N.C. Dec. 6, 2006).

When a levy has been made on an automobile pursuant to an execution, it is the duty of the officer to report the levy to the Department (now Division) in a form prescribed by it. The levy so reported is subordinate to all liens therefore noted on the certificate. Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).

As to plaintiff's estoppel from asserting lien on vehicles where it did nothing to perfect its security interest, see Wayne Fin. Corp. v. Shivar, 8 N.C. App. 489, 174 S.E.2d 876 (1970).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired an automobile for value. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

A security interest in a mobile home is subject to the same perfection requirements as an automobile. Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

Plaintiff's argument that owner no longer intended to operate her mobile home upon the highway did not nullify defendant's properly perfected security interest in the mobile home. Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251, cert. denied, 330 N.C. 197, 412 S.E.2d 59 (1991).

Cited in Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970); Moser v. Employers Com. Union Ins. Co. of Am., 25 N.C. App. 309, 212 S.E.2d 664 (1975); Paccar Fin. Corp. v. Harnett Transf., Inc., 51 N.C. App. 1, 275 S.E.2d 243 (1981); Barclaysamerican/Credit Co. v. Riddle, 57 N.C. App. 662, 292 S.E.2d 177 (1982); In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986); Butler v. Green Tree Fin. Servicing Corp. (In re Wester), 229 Bankr. 348 (Bankr. E.D.N.C. 1998).

OPINIONS OF ATTORNEY GENERAL

Perfection of Security Interest. — A security interest in a motor vehicle is not valid against third parties unless perfected by application for notation upon the certificate of title for the vehicle as provided in this and the following sections. See opinion of Attorney General to Mr. Eric L. Gooch, Director, Sales and Use Tax Division, North Carolina Department of Revenue, 40 N.C.A.G. 446 (1969).

§ 20-58.1. Duty of the Division upon receipt of application for notation of security interest.

(a) Upon receipt of an application for notation of security interest, the required fee and accompanying documents required by G.S. 20-58, the Division, if it finds the application and accompanying documents in order, shall either endorse upon the certificate of title or issue a new certificate of title containing, the name and address of each secured party, and the date of perfection of each security interest as determined by the Division. The Division shall deliver or mail the certificate to the first secured party named in it and shall also notify the new secured party that his security interest has been noted upon the certificate of title.

(b) If the certificate of title is in the possession of some prior secured party, the Division, when satisfied that the application is in order, shall procure the certificate of title from the secured party in whose possession it is being held, for the sole purpose of noting the new security interest. Upon request of the Division, a secured party in possession of a certificate of title shall forthwith deliver or mail the certificate of title to the Division. Such delivery of the certificate does not affect the rights of any secured party under his security agreement. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5; 1979, c. 145, s. 3.)

Legal Periodicals. — For 1984 survey, "The Application of the North Carolina Motor Vehicle Act and the Uniform Commercial Code to the Sale of Motor Vehicles by Consignment," see 63 N.C.L. Rev. 1105 (1985).

CASE NOTES

Date of Perfection of Lien. — Section 20-58.2 provides expressly that the security interest evidenced by a security agreement is perfected as of the date of delivery of the application to the Department (now Division) and payment of the required fee. Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

Where both owner and creditor did all they were required to do and could do to perfect lien, under G.S. 20-58.2, which relates solely and specifically to the date of perfection of the lien, the security interest was perfected as of the date of delivery of the application to the Department (now Division). Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired an automobile for value. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Cited in Wayne Fin. Corp. v. Shivar, 8 N.C. App. 489, 174 S.E.2d 876 (1970); Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

§ 20-58.2. Date of perfection.

If the application for notation of security interest with the required fee is delivered to the Division within 20 days after the date of the security agreement, the security interest is perfected as of the date of the execution of the security agreement. Otherwise, the security interest is perfected as of the date of delivery of the application to the Division. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5; 1991, c. 414, s. 1.)

Editor's Note. — Session Laws 2007-209, s. 3, provides: "Notwithstanding G.S. 20-58.2, any application for notation of security interest which had been completed but not yet submitted to or processed by the Division by the effective date of this act by reason of the fact that one or more owners failed to possess a North Carolina drivers license or North Carolina special identification card, as required by Section 4 of S.L. 2007-164, shall be deemed perfected as of the date of the execution of the security agreement provided that the application is delivered to the Division along with the required fee within 20 days of the effective date of this act." Session Laws 2007-164, s. 4, which amended G.S. 20-52(a)(1a)b by substituting "North Carolina drivers license number or North Carolina special identification card number" for "social security number," was repealed by Session Laws 2007-209, s. 1.

Session Laws 2007-209, s. 4, provides: "The time limit provisions set forth in G.S. 20-73(a) and the penalties provided in G.S. 20-73(c) shall not apply to any completed application which had not yet been submitted to or processed by the Division by the effective date of this act by reason of the fact that one or more owners failed to possess a North Carolina drivers license or North Carolina special identification card, as required by Section 4 of S.L. 2007-164, provided that the requirements of G.S. 20-73 are met within 28 days of the effective date of this act." Session Laws 2007-164, s. 4, which amended G.S. 20-52(a)(1a)b by substituting "North Carolina drivers license number or North Carolina special identification card number" for "social security number," was repealed by Session Laws 2007-209, s. 1.

Session Laws 2007-209, s. 5, provides in part: "Sections 1, 3, and 4 of this act are effective when they become law [July 11, 2007] and apply to applications for registration and certificate of title made on or after that date. Sections 1, 3, and 4 of this act shall also apply to any certificate of title, registration plate, registration card, or notation of security interest application which had been completed but not yet submitted to or processed by the Division by the effective date of this act."

CASE NOTES

Date of Perfection of Security Interest. — This section provides expressly that the security interest evidenced by a security agreement is perfected as of the date of delivery of the application to the Department (now Division) and payment of the required fee. Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

Where both owner and creditor did all they were required to do and could do to perfect lien, under this section, which relates solely and specifically to the date of perfection of the lien, the security interest was perfected as of the date of delivery of the application to the Department (now Division). Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

Under this section, perfection of the security interest in a motor vehicle occurs when the application and proper fee are delivered to the Division of Motor Vehicles. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Perfection by notation on an automobile's certificate of title occurs when the application and proper fee are delivered to the DMV. In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired an automobile for value. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Relation Back of Lien. — The lien, if the agreement to pay is filed with the Department (now Division) within 10 (now 20) days from its date, relates back to the day the lien was created. Wachovia Bank & Trust Co. v. Wayne Fin. Co., 262 N.C. 711, 138 S.E.2d 481 (1964), decided under § 20-58 as it stood before the 1969 revision of §§ 20-58 through 20-58.8.

In order for the date of perfection to relate back to the purchase date or date of creation of the security interest, proper application must be made to the Division of Motor Vehicles on or within 10 (now 20) days from the date of purchase. In re Holder, 94 Bankr. 395 (Bankr. M.D.N.C. 1988), aff'd, 892 F.2d 29 (1989).

Cited in Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986); Wachovia Bank & Trust Co. v. Holder, 94 Bankr. 394 (M.D.N.C. 1988); Wachovia Bank & Trust Co. v. Bringle, 892 F.2d 29 (4th Cir. 1989); Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251 (1991).

§ 20-58.3. Notation of assignment of security interest on certificate of title.

An assignee of a security interest may have the certificate of title endorsed or issued with the assignee named as the secured party, upon delivering to the Division on a form prescribed by the Division, with the required fee, an assignment by the secured party named in the certificate together with the certificate of title. The assignment must contain the address of the assignee from which information concerning the security interest may be obtained. If the certificate of title is in the possession of some other secured party the procedure prescribed by G.S. 20-58.1(b) shall be followed. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Legal Periodicals. — For note on commercial reasonableness and the public sale in North Carolina, see 17 Wake Forest L. Rev. 153 (1981).

§ 20-58.4. Release of security interest.

(a) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, the secured party shall within 10 days after demand and, in any event, within 30 days, execute a release of his security interest, in the space provided therefor on the certificate or as the Division prescribes, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner.

(b) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of a prior secured party, the secured party whose security interest is satisfied shall within 10 days execute a release of his security interest in such form as the Division prescribes and mail or deliver the same to the owner or other person authorized to receive the same for the owner.

(c) An owner, upon securing the release of any security interest in a vehicle shown upon the certificate of title issued therefor, may exhibit the documents evidencing such release, signed by the person or persons making such release, and the certificate of title to the Division which shall, when satisfied as to the genuineness and regularity of the release, issue to the owner either a new certificate of title in proper form or an endorsement or rider attached thereto showing the release of the security interest.

(d) If an owner exhibits documents evidencing the release of a security interest as provided in subsection (c) of this section but is unable to furnish the certificate of title to the Division because it is in possession of a prior secured party, the Division, when satisfied as to the genuineness and regularity of the release, shall procure the certificate of title from the person in possession thereof for the sole purpose of noting thereon the release of the subsequent security interest, following which the Division shall return the certificate of title to the person from whom it was obtained and notify the owner that the release has been noted on the certificate of title.

(e) If it is impossible for the owner to secure from the secured party the release contemplated by this section, the owner may exhibit to the Division such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been satisfied, which the Division may treat as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least 15 days' notice of the pendency thereof shall be given to the secured party at his last known address by the Division by registered letter. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

CASE NOTES

Failure to Comply. — Notwithstanding the full payment and discharge of the claim, the creditor failed for months and months to comply with G.S. 20-58.4, which required a secured creditor to release its lien on the title to a motor vehicle or a mobile home within 30 days of the full payment or within 10 days after receipt of written demand from the debtors or the attorney for the debtors following a final payment. A violation of this lien-release statute could also constitute a violation of the North Carolina Retail Installment Sales Act and furthermore an Unfair and Deceptive Trade Practice in Violation N.C. Gen. Stat. ch. 75; these statutes applied to bankruptcy debtors. The creditor was subject to statutory damages, legal fees, and expenses for its failure to comply with the North Carolina lien release statute. In re Sipe, — Bankr. —, 2001 Bankr. LEXIS 2199 (Bankr. W.D.N.C. July 18, 2001).

§ 20-58.5. Duration of security interest in favor of corporations which dissolve or become inactive.

Any security interest recorded in favor of a corporation which, since the recording of such security interest, has dissolved or become inactive for any reason, and which remains of record as a security interest of such corporation for a period of more than three years from the date of such dissolution or becoming inactive, shall become null and void and of no further force and effect. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1979, c. 145, s. 4.)

Cross References. — As to perfection of security interest, see G.S. 20-58.

§ 20-58.6. Duty of secured party to disclose information.

A secured party named in a certificate of title shall, upon written request of the Division, the owner or another secured party named on the certificate, disclose information when called upon by such person, within 10 days after his lien shall have been paid and satisfied, and any person convicted under this section shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1937, c. 407, s. 23; 1975, c. 716, s. 5.)

§ 20-58.7. Cancellation of certificate.

The cancellation of a certificate of title shall not, in and of itself, affect the validity of a security interest noted on it. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

CASE NOTES

Cited in Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251 (1991).

§ 20-58.8. Applicability of §§ 20-58 to 20-58.8; use of term "lien".

(a) Repealed by Session Laws 2000, c. 169, s. 30, effective July 1, 2001.

(b) The provisions of G.S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

(1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;

(2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or

(3) A security interest in a vehicle created by a manufacturer or by a dealer in new or used vehicles who holds the vehicle in his inventory.

(c) When the term "lien" is used in other sections of this Chapter, or has been used prior to October 1, 1969, with reference to transactions governed by G.S. 20-58 through 20-58.8, to describe contractual agreements creating security interests in personal property, the term "lien" shall be construed to refer to a "security interest" as the term is used in G.S. 20-58 through 20-58.8 and the Uniform Commercial Code. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 2000-169, s. 30.)

Editor's Note. — The Uniform Commercial Code, referred to in this section, is codified as Chapter 25, G.S. 25-1-101 et seq.

CASE NOTES

Car held in inventory by a used car business fell within the provisions of subdivision (b)(3) of this section and G.S. 25-9-302(3)(b). North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Perfection of Federal Tax Lien on Motor Vehicle. — While the normal method for recording a lien on a motor vehicle is to record it on the certificate of title, subdivision (b)(2) makes that method of perfecting a lien expressly inapplicable to federal tax liens. In re Williams, 109 Bankr. 179 (Bankr. W.D.N.C. 1989).

A federal tax lien attaches to all real and personal property of the debtors pursuant to federal law, and is perfected by the filing of a notice of tax lien. Where that was accomplished in this case in accordance with federal regulation and former G.S. 44-68.1(b)(2), the IRS lien attached to and was secured by debtors' automobiles, regardless of the fact that no lien was noted on the automobiles' titles. In re Williams, 109 Bankr. 179 (Bankr. W.D.N.C. 1989).

Applied in American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

§ 20-58.9: Repealed by Session Laws 1969, c. 838, s. 3.

§ 20-58.10. Effective date of §§ 20-58 to 20-58.9.

The provisions of G.S. 20-58 through 20-58.9 inclusive shall be effective and relate to the perfecting and giving notice of security interests entered into on and after January 1, 1962. (1961, c. 835, s. 6.)

CASE NOTES

Applied in Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962); Ferguson v. Morgan, 282 N.C. 83, 191 S.E.2d 817 (1972).

Cited in Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251 (1991).

§ 20-59. Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.

It shall be unlawful and constitute a Class 3 misdemeanor for a lienor who holds a certificate of title as provided in this Article to refuse or fail to surrender such certificate of title to the person legally entitled thereto, when called upon by such person, within 10 days after his lien shall have been paid and satisfied. (1937, c. 407, s. 23; 1993, c. 539, s. 332; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-60. Owner after transfer not liable for negligent operation.

The owner of a motor vehicle who has made a bona fide sale or transfer of his title or interest, and who has delivered possession of such vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee, shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another. (1937, c. 407, s. 24.)

§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration.

Except as permitted under G.S. 20-62.1, any owner dismantling or wrecking any vehicle shall forward to the Division the certificate of title, registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. The Commissioner upon receipt of certificate of title and notice from the owner thereof that a vehicle has been junked or dismantled may cancel and destroy such record of certificate of title. (1937, c. 407, s. 25; 1947, c. 219, s. 3; 1961, c. 360, s. 3; 1975, c. 716, s. 5; 2007-505, s. 2.)

§ 20-62: Repealed by Session Laws 1993, c. 533, s. 9.

§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

(a) Records for Scrap or Parts. — A secondary metals recycler, as defined in G.S. 66-11(a)(3), and a salvage yard, as defined in G.S. 20-137.7(6), purchasing motor vehicles solely for the purposes of dismantling or wrecking such motor vehicles for the recovery of scrap metal or for the sale of parts only, must comply with the provision of G.S. 20-61, provided, however, that a secondary metals recycler or salvage yard may purchase a motor vehicle without a certificate of title, if the motor vehicle is 10 model years old or older and the secondary metals recycler or salvage yard comply with the following requirements:

(1) Maintain a record of all purchase transactions of motor vehicles. The following information shall be maintained for transactions of motor vehicles:
   a. The name and address of the secondary metals recycler or salvage yard.
   b. The name, initials, or other identification of the individual entering the information.
   c. The date of the transaction.
   d. A description of the motor vehicle, including the make and model to the extent practicable.
   e. The vehicle identification number (VIN) of the vehicle.
   f. The amount of consideration given for the motor vehicle.
   g. A written statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the motor vehicle.
   h. The name and address of the person from whom the motor vehicle is being purchased.
   i. A photocopy or electronic scan of a valid drivers license or identification card issued by the Division of Motor Vehicles of the seller of the motor vehicle, or seller's agent, to the secondary metals recycler or salvage yard, or in lieu thereof, any other identification card containing a photograph of the seller as issued by any state or federal agency of the United States: provided, that if the buyer has a copy of the seller's photo identification on file, the buyer may reference the identification that is on file, without making a separate photocopy for each transaction. If seller has no identification as described in this sub-subdivision, the secondary metals recycler or salvage yard shall not complete the transaction.

(2) Maintain the information required under subdivision (1) of this subsection for not less than two years from the date of the purchase of the motor vehicle.

(b) Inspection of Motor Vehicles and Records. — At any time it appears a secondary metals recycler, salvage yard, or any other person involved in secondary metals operations is open for business, a law enforcement officer shall have the right to inspect the following:

(1) Any and all motor vehicles in the possession of the secondary metals recycler, the salvage yard, or any other person involved in secondary metals operations.

(2) Any records required to be maintained under subsection (a) of this section.

(c) Violations. — Any person who knowingly and willfully violates any of the provisions of this section, or any person who falsifies the statement required under subsection (a)(1)g. of this section, shall be guilty of a Class 1 misdemeanor for a first offense. A second or subsequent violation of this section is a Class I felony. The court may order a defendant seller under this subsection to make restitution to the secondary metals recycler or salvage yard for any damage or loss caused by the defendant seller arising out of an offense committed by the defendant seller.

(d) Confiscation of Vehicle or Tools Used in Illegal Sale. — Any motor vehicle used to transport another motor vehicle illegally sold under this section may be seized by law enforcement and is subject to forfeiture by the court, provided, however, that no vehicle used by any person in the transaction of a sale of regulated metals is subject to forfeiture unless it appears that the owner or other person in charge of the motor vehicle is a consenting party or privy to the commission of a crime, and a forfeiture of the vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act.

Whenever property is forfeited under this subsection by order of the court, the law enforcement agency having custody of the property shall sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds are remitted to the Civil Fines and Forfeitures Fund established pursuant to G.S. 115C-457.1.

(e) Exemptions. — As used in this section, the term "motor vehicle" shall not include motor vehicles which have been mechanically flattened, crushed, baled, or logged and sold for purposes of scrap metal only.

(f) Preemption. — No local government shall enact any local law or ordinance with regards to the regulation of the sale of motor vehicles to secondary metals recyclers or salvage yards. (2007-505, s. 1.)

§ 20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

(a) The Division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semitrailer and for every other motor vehicle. Registration plates issued by the Division under this Article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this Article has become illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Division. When said registration plate or plates are so surrendered to the Division, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who willfully refuses to surrender said plates to the Division shall be guilty of a Class 2 misdemeanor.

(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.

(c) Such registration plate and the required numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and motorcycle trailers with suitably reduced size registration plates.

(e) Preservation and Cleaning of Registration Plates. — It shall be the duty of each and every registered owner of a motor vehicle to keep the registration plates assigned to such motor vehicle reasonably clean and free from dust and dirt, and such registered owner, or any person in his employ, or who operates such motor vehicle by his authority, shall, upon the request of any proper officer, immediately clean such registration plates so that the numbers thereon may be readily distinguished, and any person who shall neglect or refuse to so clean a registration plate, after having been requested to do so, shall be guilty of a Class 3 misdemeanor.

(f) Operating with False Numbers. — Any person who shall willfully operate a motor vehicle with a registration plate which has been repainted or altered or forged shall be guilty of a Class 2 misdemeanor.

(g) Alteration, Disguise, or Concealment of Numbers. — Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or cause to be covered any part or portion of a registration plate or the figures or letters thereon by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who covers the State name, year sticker, or month sticker on a registration plate with a license plate frame commits an infraction and shall be fined under G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that do not prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras.

(h) Commission Contracts for Issuance of Plates and Certificates. — All registration plates, registration certificates, and certificates of title issued by the Division, outside of those issued from the Charlotte and Raleigh offices of the Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of the plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina. The Division shall make a reasonable effort in every locality, except as noted above, to enter into a commission contract for the issuance of the plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts, it shall issue the plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates, and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of the distribution. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

Commission contracts entered into by the Division under this subsection shall provide for the payment of compensation on a per transaction basis. The collection of the highway use tax shall be considered a separate transaction for which one dollar and twenty-seven cents ($1.27) compensation shall be paid. The performance at the same time of one or more of the remaining transactions listed in this subsection shall be considered a single transaction for which one dollar and forty-three cents ($1.43) compensation shall be paid.

A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card issued without collection of property taxes or fees under G.S. 105-330.5, a registration renewal sticker, or a certificate of title.

(2) Issuance of a handicapped placard or handicapped identification card.

(3) Acceptance of an application for a personalized registration plate.

(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.

(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.

(7) Receipt of the civil penalty imposed by G.S. 20-311 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.

(8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.

(8b) Sale of one or more inspection stickers in a single transaction to a licensed inspection station.

(9) Collection of the highway use tax.

(10) Acceptance of a temporary lien filing.

(h1) Commission contracts entered into by the Division under this subsection shall also provide for the payment of an additional one dollar ($1.00) of compensation to commission contract agents for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of G.S. 20-85.

(h2) Upon the closing of the only contract license plate agency in a county, the Division shall as soon as practicable designate a temporary location for the issuance of all registration plates, registration certificates, and certificates of title issued by the Division for that county. The designation shall be posted at the former agency location for not less than 30 days and shall include the street address and telephone number of the temporary location. A former contract agent shall allow the posting of this required notice at the former location for a period of not less than 30 days. A failure to comply with the posting requirements of this section by a former contract agent shall be a Class 3 misdemeanor.

(i) Electronic Applications and Collections. — The Division shall accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and is authorized to electronically collect fees from online motor vehicle registration vendors under contract with the Division.

(j) The Division shall contract with at least two online motor vehicle registration vendors which may enter into contracts with motor vehicle dealers to complete and file Division required documents for the issuance of a certificate of title, registration plate, or registration card or a duplicate certificate of title, registration plate, or registration card for a motor vehicle, upon purchase or sale of a vehicle.

(k) Commission contract agents are authorized to enter into contracts with online motor vehicle registration vendors which are under contract with the Division to complete and file Division required documents for the issuance of a certificate of title, registration plate, or registration card or a duplicate certificate of title, registration plate, or registration card for a motor vehicle. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088; 1969, c. 1140; 1971, c. 945; 1973, c. 629; 1975, c. 716, s. 5; 1979, c. 470, s. 1; c. 604, s. 1; c. 917,

s. 4; 1981, c. 750; c. 859, s. 76; 1983, c. 253, ss. 1-3; 1985, c. 257; 1991 (Reg. Sess., 1992), c. 1007, s. 32; 1993, c. 539, ss. 333-336; 1994, Ex. Sess., c. 24, s. 14(c); 1997-36, s. 1; 1997-443, s. 32.7(a); 1997-461, s. 1; 1998-160, s. 3; 1998-212, ss. 15.4(a), 27.6(a); 1999-452, ss. 13, 14; 2000-182, s. 3; 2001-424, s. 27.21; 2001-487, s. 50(c); 2002-159, s. 31.1; 2003-424, s. 1; 2004-77, s. 1; 2004-79, s. 1; 2004-131, s. 1; 2004-185, s. 1; 2005-216, s. 1; 2006-209, s. 1; 2006-213, s. 4; 2007-243, s. 1; 2007-400, s. 1; 2007-483, s. 1; 2007-488, ss. 2-5; 2008-225, s. 8; 2009-445, s. 24(b1); 2009-456, s. 1.)

Editor's Note. — Subdivisions (b)(21) through (b)(24), as enacted by Session Laws 2007-483, s. 1, have been redesignated as subdivisions (b)(22) through (b)(25), at the direction of the Revisor of Statutes.

Session Laws 1998-212, s. 15.4(b), provides that the Great Smoky Mountains National Park special registration plate shall have the words 'First in Flight' printed at the top of the plate and the background of the plate shall be the design submitted to the Division by Friends of the Great Smoky Mountains National Park. The background color and design shall allow numbers on the face of the plate to be readily distinguished.

Session Laws 1998-212, s. 1.1 provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998.'"

Session Laws 1998-212, s. 30.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year."

Session Laws 1998-212, s. 30.5 contains a severability clause.

Session Laws 2007-323, s. 27.1, provides: "The Department of Transportation, Division of Motor Vehicles, is prohibited from opening drivers license issuance and vehicle registration issuance and renewal One-Stop Shops until the General Assembly has considered and appropriated funds for the purpose of One-Stop Shops.

"The Department of Transportation shall develop a business plan that thoroughly outlines the operational plans of a combined function center, a detailed budget for each proposed location, and any identified savings gleaned from the combined services. In addition, the Division of Motor Vehicles shall conduct an analysis on the anticipated number of transactions and the impact to independent tag agents in those areas. The report is due to the Joint Legislative Transportation Oversight Committee, the Joint Appropriations Subcommittee for Transportation, and the Fiscal Research Division by March 15, 2008."

Session Laws 2007-323, ss. 27.11(a) and (b), provide: "(a) Of the funds appropriated from the Highway Fund to the Department of Transportation under this act, the Division of Motor Vehicles may expend the sum of two hundred eighty-two thousand one hundred ninety-nine dollars ($282,199) for fiscal year 2007-2008 and the sum of ninety-nine thousand dollars ($99,000) for fiscal year 2008-2009 to recall vehicle license plates. The Division shall develop a schedule by which approximately 94,000 of the oldest license plates are recalled annually for the next five years. Each fiscal year after 2008-2009, the General Assembly intends to appropriate from the Highway Fund to the Department of Transportation the sum of ninety-nine thousand dollars ($99,000) in recurring funds for the Division to implement a continuous license plate recall program.

"(b) The Division shall report to the Joint Appropriations Subcommittee on Transportation and the Fiscal Research Division no later than May 1, 2008, on the progress of the vehicle license plate recall schedule and the implementation of the continuous license plate recall program."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 25.3 (a)-(c), provides: "(a) The Department of Transportation, Division of Motor Vehicles, is prohibited from opening drivers license issuance and vehicle registration issuance and renewal One-Stop Shops until the General Assembly has considered and appropriated funds for the purpose of One-Stop Shops.

"(b) The Department of Transportation shall develop a plan that thoroughly outlines the operational plans of combined function centers designated as One-Stop Shops. The plan may contain recommendations regarding making necessary changes to G.S. 20-63(h) to expand Division services. The plan should detail a cost-effectiveness comparison between the current means for delivery of service and the proposed combined function center services. The plan should also include a thorough justification for each proposed One-Stop Shop location, including any assumptions made in the justification process. The plan should clearly highlight the benefits to the State, including customer service enhancements for Division customers obtained by implementation of One-Stop Shops. The Division shall also conduct an analysis of the anticipated number of transactions at the One-Stop Shops and consider the impact on commission contracts for independent license plate agents, as well as any other interested party affected by the change.

"(c) The Division shall report to the Joint Legislative Transportation Oversight Committee, the Joint Appropriations Subcommittee for Transportation, and the Fiscal Research Division no later than October 31, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008 2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008 2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-456, s. 3, provides: "Section 1 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. During the period from December 1, 2009, to November 30, 2010, an operator of a motor vehicle who violates this act shall be given a warning of violation only. The remainder of this act is effective when it becomes law."

Effect of Amendments. — Session Laws 2006-213, s. 4, effective July 1, 2008, and applicable to lapses occurring on or after that date, substituted "G.S. 20-311" for "G.S. 20-309" in subdivision (h)(7).

Session Laws 2008-225, s. 8, effective December 1, 2008, inserted "or toll collection" following "traffic control" twice in subsection (g).

Session Laws 2009-445, s. 24(b1), effective August 7, 2009, inserted "issued without collection of property taxes or fees under G.S. 105-330.5" in subdivision (h)(1).

Session Laws 2009-456, s. 1, effective December 1, 2009, and applicable to offenses committed on or after that date, in subsection (g), inserted the next-to-last sentence and in the last sentence, substituted "do not prevent" for "are not designed or intended to prevent." See Editor's note for applicability.

CASE NOTES

License plates are a receipt for the privilege of using North Carolina highways; thus any aid they give to commerce relates only to intrastate movements. Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

The legislature did not intend to aid or facilitate the functioning of an interstate facility, in this case the State highways. Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

The tax collection from license sales under subsection (h) is essentially a local activity which Congress did not intend to include under the Fair Labor Standards Act. Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

And those commissioned to sell license plates are not dealing in interstate commerce, but perform a general tax-collecting effort. Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

Purpose of Subsection (h). — Subsection (h) of this section was intended to further the public convenience by setting up local license plate distribution points throughout the State, as well as to eliminate the necessity of employing temporary Department (now Division) personnel for a 45-day period between January 1 and February 15 of each year when the vast bulk of the license plates are issued. Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

A North Carolina license plate remains the property of the State and can be summarily seized under certain conditions under subsection (a). Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

Aiding and Abetting Unlawful Use of Plate. — Guilt attaches to anyone who knowingly aids and abets the unlawful use of a license plate. Woodruff v. Holbrook, 255 N.C. 740, 122 S.E.2d 709 (1961).

The maximum punishment for a violation of this section or G.S. 20-111 would be that prescribed by G.S. 20-176(b), namely, a fine of not more than $100.00 or imprisonment in the county or municipal jail for not more than 60 days, or both such fine and imprisonment. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Cited in State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991); State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

§ 20-63.01. Bonds required for commission contractors.

(a) A guaranty bond is required for each commission contractor that is not a governmental subdivision of this State that is granted a contract to issue license plates or conduct business pursuant to G.S. 20-63. Provided, however, a commission contractor that is unable to secure a bond may, with the consent of the Division, provide an alternative to a guaranty bond, as provided in subsection (c) of this section.

The Division may revoke, with cause, a contract with a commission contractor that fails to maintain a bond or an alternative to a bond, pursuant to this section.

(b)(1) When application is made for a contract or contract renewal, the applicant shall file a guaranty bond with the clerk of the superior court and/or the register of deeds of the county in which the commission contractor will be located. The bond shall be in favor of the Division. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to the Division for a loss of revenue for any reason, including bankruptcy, employee embezzlement or theft, foreclosure, or ceasing to operate.

(2) The bond shall be in an amount determined by the Division to be adequate to provide indemnification to the Division under the terms of the bond. The bond amount shall be at least one hundred thousand dollars ($100,000).

(3) The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Division. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(4) The Division may be able to negotiate bonds for contractors who qualify for bonds as a group under favorable rates or circumstances. If so, the Division may require those contractors who can qualify for the group bond to obtain their bond as part of a group of contractors. The Division may deduct the premiums for any bonds it may be able to negotiate at group rates from the commissioned contractors' compensation.

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the Division and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Division, an applicant may file with the clerk of the superior court and/or the register of deeds of the county in which the commission contractor will be located, in lieu of a bond:

(1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the Division; (ii) which is executed by the applicant; (iii) which is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.

(2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the Division of Motor Vehicles; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Division of Motor Vehicles; or in the

case of a nonnegotiable certificate of deposit, is assigned to the Division of Motor Vehicles in a form satisfactory to the Division; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section. (2007-488, s. 1.)

Editor's Note. — Session Laws 2007-488, s. 1, enacted this section as G.S. 20-63A. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2007-488, s. 6, made this section effective January 1, 2008.

§ 20-63.1. Division may cause plates to be reflectorized.

The Division of Motor Vehicles is hereby authorized to cause vehicle license plates for 1968 and future years to be completely treated with reflectorized materials designed to increase visibility and legibility of license plates at night. (1967, c. 8; 1975, c. 716, s. 5.)

§ 20-64. Transfer of registration plates to another vehicle.

(a) Except as otherwise provided in this Article, registration plates shall be retained by the owner thereof upon disposition of the vehicle to which assigned, and may be assigned to another vehicle, belonging to such owner and of a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon proper application to the Division and payment of a transfer fee and such additional fees as may be due because the vehicle to which the plates are to be assigned requires a greater registration fee than that vehicle to which the license plates were last assigned. In cases where the plate is assigned to another vehicle belonging to such owner, and is not of a like vehicle category within the meaning of G.S. 20-87 and 20-88, the owner shall surrender the plate to the Division and receive therefor a plate of the proper category, and the unexpired portion of the fee originally paid by the owner for the plate so surrendered shall be a credit toward the fee charged for the new plate of the proper category. Provided, that the owner shall not be entitled to a cash refund when the registration fee for the vehicle to which the plates are to be assigned is less than the registration fee for that vehicle to which the license plates were last assigned. An owner assigning or transferring plates to another vehicle as provided herein shall be subject to the same assessments and penalties for use of the plates on another vehicle or for improper use of the plates, as he could have been for the use of the plates on the vehicle to which last assigned. Provided, however, that upon compliance with the requirements of this section, the registration plates of vehicles owned by and registered in the name of a corporation may be transferred and assigned to a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon the showing that the vehicle to which the transfer and assignment is to be made is owned by a corporation which is a wholly owned subsidiary of the corporation applying for such transfer and assignment.

(b) Upon a change of the name of a corporation or a change of the name under which a proprietorship or partnership is doing business, the corporation, partnership or proprietorship shall forthwith apply for correction of the certificate of title of all vehicles owned by such corporation, partnership or proprietorship so as to correctly reflect the name of the corporation or the name under which the proprietorship or partnership is doing business, and pay the fees required by law.

(c) Upon a change in the composition of a partnership, ownership of vehicles belonging to such partnership shall not be deemed to have changed so long as one partner of the predecessor partnership remains a partner in the reconstituted partnership, but the reconstituted partnership shall forthwith apply for correction of the certificate of title of all vehicles owned by such partnership so as to correctly reflect the composition of the partnership and the name under which it is doing business, if any, and pay the fees required by law.

(d) When a proprietorship or partnership is incorporated, the corporation shall retain license plates assigned to vehicles belonging to it and may use the same, provided the corporation applies for and obtains transfers of the certificates of title of all vehicles and pays the fees required by law.

(e) Upon death of the owner of a registered vehicle, such registration shall continue in force as a valid registration until the end of the year for which the license is issued unless ownership of the vehicle passes or is transferred to any person other than the surviving spouse before the end of the year.

(f) The owner or transferor of a registered vehicle who surrenders the registration plate to the division may secure a refund for the unexpired portion of such plate prorated on a monthly basis, beginning the first day of the month following surrender of the plate to the division, provided the annual fee of such surrendered plate is sixty dollars ($60.00) or more. This refund may not exceed one half of the annual license fee. No refund shall be made unless the owner or transferor furnishes proof of financial responsibility on the registered vehicle effective until the date of the surrender of the plate. Proof of financial responsibility shall be furnished in a manner prescribed by the Commissioner.

(g) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations as he may deem necessary for the administration of transfers of license plates and vehicles under this Article. (1937, c. 407, s. 28; 1945, c. 576, s. 1; 1947, c. 914, s. 1; 1951, c. 188; c. 819, s. 1; 1961, c. 360, s. 5; 1963, cc. 1067, 1190; 1967, c. 995; 1973, c. 1134; 1975, c. 716, s. 5; 1981, c. 227; 2004-167, s. 1; 2004-199, s. 59; 2007-491, s. 5.)

Editor's Note. — Session Laws 2007-491, s. 47, provides in part: "The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 [repealed] before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate."

Effect of Amendments. — Session Laws 2007-491, s. 5, effective January 1, 2008, deleted the former last sentence of subsection (f), which read: "Any unauthorized refund may be recovered in the manner set forth in G.S. 20-99."

CASE NOTES

Cited in Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

§ 20-64.1: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 6.

Editor's Note. — Section 62-278 in Chapter 62 as rewritten is in substance a reenactment of this former section.

§ 20-64.2. Permit for emergency use of registration plate.

The Commissioner may, if in his opinion it is equitable, grant to the licensee a special permit for the use of a registration plate on a vehicle other than the vehicle for which the plate was issued, when the vehicle for which such plate was issued is undergoing repairs in a regular repair shop or garage.

Application for such permit shall be made on forms provided by the Division and must show, in addition to such other information as may be required by the Commissioner, that an emergency exists which would warrant the issuance of such permit.

Such permit shall be evidenced by a certificate issued by the Commissioner and which shall show the time of issuance, the person to whom issued, the motor number, serial number or identification number of the vehicle on which such plate is to be used and shall be in the immediate possession of the person operating such vehicle at all times while operating the same. And such certificate shall be valid only so long as the vehicle for which the registration plate has been issued shall remain in the repair shop or garage but not to exceed a period of 20 days from its issuance. The person to whom the permit provided in this section is issued shall be liable for any additional license fees or penalties that might accrue by reason of the provisions of G.S. 20-86 and 20-96 of the General Statutes. (1957, c. 402; 1975, c. 716, s. 5.)

§ **20-65:** Repealed by Session Laws 1979, 2nd Session, c. 1280, s. 1.

§ 20-66. Renewal of vehicle registration.

(a) Annual Renewal. — The registration of a vehicle must be renewed annually. To renew the registration of a vehicle, the owner of the vehicle must file an application with the Division and pay the required registration fee. The Division may receive and grant an application for renewal of registration at any time before the registration expires.

(b) Method of Renewal. — When the Division renews the registration of a vehicle, it must issue a new registration card for the vehicle and either a new registration plate or a registration renewal sticker. The Division may renew a registration plate for any type of vehicle by means of a renewal sticker.

(b1) Repealed by Session Laws 1993, c. 467, s. 2.

(c) Renewal Stickers. — A registration renewal sticker issued by the Division must be displayed on the registration plate that it renews in the place prescribed by the Commissioner and must indicate the period for which it and the registration plate on which it is displayed are valid. Except where physical differences between a registration renewal sticker and a registration plate render a provision of this Chapter inapplicable, the provisions of this Chapter relating to registration plates apply to registration renewal stickers.

(d), (e) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, § 5.

(f) Repealed by Session Laws 1993, c. 467, s. 2.

(g) When Renewal Sticker Expires. — The registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker expired.

The Division may vary the expiration dates of registration renewal stickers issued for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division implements registration renewal for a type of vehicle by means of a renewal sticker, it may issue a registration renewal sticker that expires at the end of any monthly interval.

(h) Repealed by Session Laws 2004-167, s. 3, as amended by Session Laws 2004-199, s. 59, effective January 1, 2006.

(i) Property Tax Consolidation. — When the Division receives an application under subsection (a) for the renewal of registration before the current registration expires, the Division shall grant the application if it is made for the purpose of consolidating the property taxes payable by the applicant on classified motor vehicles, as defined in G.S. 105-330. The registration fee for a motor vehicle whose registration cycle is changed under this subsection shall be reduced by a prorated amount. The prorated amount is one-twelfth of the registration fee in effect when the motor vehicle's registration was last renewed multiplied by the number of full months remaining in the motor vehicle's current registration cycle, rounded to the nearest multiple of twenty-five cents (25¢).

(j) Inspection Prior to Renewal of Registration. — The Division shall not renew the registration of a vehicle unless it has a current safety or emissions inspection.

(k) Repealed by Session Laws 2008-190, s. 1, effective October 1, 2008. (1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5; 1977, c. 337; 1979, 2nd Sess., c. 1280, ss. 2, 3; 1981 (Reg. Sess., 1982), c. 1258, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 24; 1991, c. 624, ss. 6, 7; c. 672, s. 7; c. 726, s. 23; 1993, c. 467, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 5; 2004-167, ss. 2, 3; 2004-199, s. 59; 2007-503, s. 1; 2008-190, s. 1.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 1, effective October 1, 2008, and applicable to offenses committed on or after that date, added subsections (j) and (k).

Session Laws 2008-190, s. 1, effective October 1, 2008, deleted subsection (k), which was to become effective on October 1, 2008, and which was to read as follows: "Registration plates that are not renewed shall be surrendered to the Division within 120 days of expiration."

§ 20-66.1: Repealed by Session Laws 1973, c. 1389, s. 2.

Cross References. — For present provisions covering the subject matter of the repealed section, see G.S. 20-66.

§ 20-67. Notice of change of address or name.

(a) Address. — A person whose address changes from the address stated on a certificate of title or registration card must notify the Division of the change within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card stating the new address but is not required to do so. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. — A person whose name changes from the name stated on a certificate of title or registration card must notify the Division of the change within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card but is not required to do so.

(c) Fee. — G.S. 20-85 sets the fee for a duplicate certificate of title or registration card. (1937, c. 407, s. 31; 1955, c. 554, s. 4; 1975, c. 716, s. 5; 1979, c. 106; 1997-122, s. 7.)

CASE NOTES

Cited in State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838 (1970).

§ 20-68. Replacement of lost or damaged certificates, cards and plates.

(a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the Division, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the Division, upon the applicant's furnishing under oath information satisfactory to the Division and payment of required fee.

(b) If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Division, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Division. It shall be mailed to the first lienholder named in it or, if none, to the owner. The Division shall not issue a new certificate of title upon application made on a duplicate until 15 days after receipt of the application. A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Division. (1937, c. 407, s. 32; 1961, c. 360, s. 7; c. 835, s. 7; 1975, c. 716, s. 5.)

Cross References. — As to fees for duplicate certificate, see G.S. 20-85.

§ 20-69. Division authorized to assign new engine number.

The owner of a motor vehicle upon which the engine number or serial number has become illegible or has been removed or obliterated shall immediately make application to the Division for a new engine or serial number for such motor vehicle. The Division, when satisfied that the applicant is the lawful owner of the vehicle referred to in such application is hereby authorized to assign a new engine or serial number thereto, and shall require that such number, together with the name of this State, or a symbol indicating this State, be stamped upon the engine, or in the event such number is a serial number, then upon such portion of the motor vehicle as shall be designated by the Division. (1937, c. 407, s. 33; 1975, c. 716, s. 5.)

§ 20-70. Division to be notified when another engine is installed or body changed.

(a) Whenever a motor vehicle registered hereunder is altered by the installation of another engine in place of an engine, the number of which is shown in the registration records, or the installation of another body in place of a body, the owner of such motor vehicle shall immediately give notice to the Division in writing on a form prepared by it, which shall state the number of the former engine and the number of the newly installed engine, the registration number of the motor vehicle, the name of the owner and any other information which the Division may require. Whenever another engine has been substituted as provided in this section, and the notice given as required hereunder, the Division shall insert the number of the newly installed engine upon the registration card and certificate of title issued for such motor vehicle.

(b) Whenever a new engine or serial number has been assigned to and stamped upon a motor vehicle as provided in G.S. 20-69, or whenever a new engine has been installed or body changed as provided in this section, the Division shall require the owner to surrender to the Division the registration card and certificate of title previously issued for said vehicle. The Division shall also require the owner to make application for a duplicate registration card and a duplicate certificate of title showing the new motor or serial number thereon or new style of body, and upon receipt of such application and fee, as for any other duplicate title, the Division shall issue to said owner a duplicate registration and a duplicate certificate of title showing thereon the new number in place of the original number or the new style of body.

(c) The notification and registration requirements contained in subsections (a) and (b) of this section regarding an engine change shall be required only if the motor vehicle into which a new engine is installed uses an engine number as the sole means to identify the vehicle. (1937, c. 407, s. 34; 1943, c. 726; 1975, c. 716, s. 5; 2009-405, s. 3.)

Cross References. — As to fee for duplicate registration card and certificate of title, see G.S. 20-85.

Effect of Amendments. — Session Laws 2009-405, s. 3, effective August 5, 2009, added subsection (c).

§ 20-71. Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title.

(a) Any person who, with fraudulent intent, shall alter any certificate of title, registration card issued by the Division, or any application for a certificate of title or registration card, or forge or counterfeit any certificate of title or registration card purported to have been issued by the Division under the provisions of this Article, or who, with fraudulent intent, shall alter, falsify or forge any assignment thereof, or who shall hold or use any such certificate, registration card, or application, or assignment, knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court.

(b) It shall be unlawful for any person with fraudulent intent to reproduce or possess a blank North Carolina certificate of title or facsimile thereof. Any person, firm or corporation violating the provisions of this section shall be guilty of a Class I felony. (1937, c. 407, s. 35; 1959, c. 1264, s. 2; 1971, c. 99; 1975, c. 716, s. 5; 1979, c. 499; 1993, c. 539, s. 1251; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Applied in Smart Fin. Co. v. Dick, 256 N.C. 669, 124 S.E.2d 862 (1962).

§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.

(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving a motor vehicle, proof of ownership of such motor vehicle at the time of such accident or collision shall be prima facie evidence that said motor vehicle was being operated and used with the authority, consent, and knowledge of the owner in the very transaction out of which said injury or cause of action arose.

(b) Proof of the registration of a motor vehicle in the name of any person, firm, or corporation, shall for the purpose of any such action, be prima facie evidence of ownership and that such motor vehicle was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of his employment. (1951, c. 494; 1961, c. 975.)

Legal Periodicals. — For case note discussing cases arising under this section, see 41 N.C.L. Rev. 124 (1962).

For note on permissive user under the omnibus clause, see 41 N.C.L. Rev. 232 (1963).

For note discussing the extension of the family purpose doctrine to motorcycles and private property, see 14 Wake Forest L. Rev. 699 (1978).

CASE NOTES

By enacting this section the legislature changed the prior common law. Broadway v. Webb, 462 F. Supp. 429 (W.D.N.C. 1977).

Legislative Intent. — By enacting this section the legislature showed a clear intent to provide victims of automobile accidents with the opportunity to recover from the owner as well as the driver of a car involved in an accident. Broadway v. Webb, 462 F. Supp. 429 (W.D.N.C. 1977).

This statute shows a clear legislative intent to provide victims of highway collisions with the opportunity to recover from the owner as well as the driver of the vehicle involved in the accident. It enables the plaintiff relying on an agency theory to submit a prima facie case to the jury. DeArmon v. B. Mears Corp., 67 N.C. App. 640, 314 S.E.2d 124 (1984), rev'd in part, 312 N.C. 749, 325 S.E.2d 223 (1985).

North Carolina has an obligation to protect persons using North Carolina roads built and maintained to a large degree with North Carolina taxpayers' funds, whether they are citizens of this State or out-of-state citizens. DeArmon v. B. Mears Corp., 67 N.C. App. 640, 314 S.E.2d 124 (1984), rev'd in part, 312 N.C. 749, 325 S.E.2d 223 (1985).

Purpose of Section. — The evident purpose of this section was to require that proof of ownership of an offending motor vehicle should be regarded as prima facie evidence that it was being operated at the time of the accident by authority of the owner, doubtless having in view the decision in Carter v. Thurston Motor Lines, 227 N.C. 193, 41 S.E.2d 586 (1947), overruled on other grounds in Knight v. Associated Transp., Inc., 255 N.C. 122 S.E.2d 64 (1961), and to provide that, in the absence of proof of ownership, proof of motor vehicle registration in the name of a person would be prima facie evidence that the motor vehicle was being operated by one for whose conduct such person was legally responsible. Travis v. Duckworth, 237 N.C. 471, 75 S.E.2d 309 (1953).

The purpose of this section is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another or for the death of a person arising out of an accident or collision involving a motor vehicle. It does not have, and was not intended to have, any other force or effect. State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

The purpose of this section is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another. It does not and was not intended to have any other force or effect. Phillips v. Utica Mut. Ins. Co., 4 N.C. App. 655, 167 S.E.2d 542 (1969).

The plain and obvious purpose of this section is to enable plaintiff to submit a prima facie case of agency to the jury which it can decide to accept or reject. Scallon v. Hooper, 49 N.C. App. 113, 270 S.E.2d 496 (1980), cert. denied, 301 N.C. 722, 276 S.E.2d 284 (1981).

The sole purpose of subsection (b) is to facilitate proof of ownership and agency where a vehicle is operated by one other than the owner. The statute makes out a prima facie case which, nothing else appearing, permits but does not compel a finding for plaintiff on the issue of agency. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

The two subsections of this section are identical in their objective. While the language used in subsection (a) is not as apt as that used in subsection (b), the intent and meaning of the two are the same. Hartley v. Smith, 239 N.C. 170, 79 S.E.2d 767 (1954); State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

The legislature used the language "was being operated and used with the authority, consent, and knowledge of the owner" in subsection (a) of this section to connote "under the direction and control of the owner," and when one acts under the direction and control of another, he is an agent or employee. It did not intend to give greater force and effect to mere proof of registration than to the admission or actual proof of ownership. In short, proof of registration is prima facie proof of ownership under subsection (b), which in turn is prima facie proof of agency under subsection (a). Hartley v. Smith, 239 N.C. 170, 79 S.E.2d 767 (1954).

Subsection (b) shifts the burden of going forward with evidence to those persons better able to establish the facts than are plaintiffs. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Scope of Section. — This section applies in all actions to recover damages for injury to the person or to property, or for the death of a person, arising out of an accident or a collision involving a motor vehicle, and the rule of evidence established thereby applies whenever a factual determination as to alleged agency is to be made, whether by the court to resolve a question of fact or by a jury to resolve an issue of fact. Howard v. Sasso, 253 N.C. 185, 116 S.E.2d 341 (1960).

Actions of the emergency vehicle driver were attributed to her employer, the county, pursuant to G.S. 20-71.1. Earp v. Peters, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 77393 (W.D.N.C. July 2, 2008).

This section was plainly meant to apply in a civil case. State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

This section creates a presumption of ownership only in those specific instances enumerated. State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

And Creates No Presumption That Owner Was Driver. — This section does not provide that proof of ownership of an automobile, or proof of the registration of an automobile in the name of any person, shall be prima facie evidence that the owner of the automobile, or the person in whose name it was registered, was the driver of the automobile at the time of a wreck. Parker v. Wilson, 247 N.C. 47, 100 S.E.2d 258 (1957); Johnson v. Fox, 254 N.C. 454, 119 S.E.2d 185 (1961).

This section makes no reference to any authority of the driver to affect the owner's liability to other persons otherwise than by the driver's conduct in the operation and control of the vehicle. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Section Applies Only Where Plaintiff Relies on Doctrine of Respondeat Superior. — This section was designed and intended to apply, and does apply, only in those cases where the plaintiff seeks to hold an owner liable for the negligence of a nonowner operator under the doctrine of respondeat superior. Roberts v. Hill, 240 N.C. 373, 82 S.E.2d 373 (1954); Jones v. Farm Bureau Mut. Auto. Ins. Co., 159 F. Supp. 404 (E.D.N.C. 1958); Howard v. Sasso, 253 N.C. 185, 116 S.E.2d 341 (1960); State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

This section applies when plaintiff, upon sufficient allegations, seeks to hold the owner liable for the negligence of a nonowner operator under the doctrine of respondeat superior. Dupree v. Batts, 276 N.C. 68, 170 S.E.2d 918 (1969); Phillips v. Utica Mut. Ins. Co., 4 N.C. App. 655, 167 S.E.2d 542 (1969); Allen v. Schiller, 6 N.C. App. 392, 169 S.E.2d 924 (1969).

Since the owner of a vehicle may be held liable for the negligence of an nonowner/operator under the doctrine of respondeat superior, proof of ownership is sufficient to take the case to the jury on the question of the legal responsibility of the defendant for the operation of the vehicle. DeArmon v. B. Mears Corp., 67 N.C. App. 640, 314 S.E.2d 124 (1984), rev'd in part, 312 N.C. 749, 325 S.E.2d 223 (1985).

And does not apply where plaintiff attempts to prove the owner's liability under the "family purpose doctrine." Fox v. Albea, 250 N.C. 445, 109 S.E.2d 197 (1959).

Nor to an Action between Insurers Seeking Declaration of Rights and Obligations. — An action which is not an action to recover damages for injury to the person or to the property or for the death of a person arising out of an accident or collision involving a motor vehicle, but is an action brought by an insurer against another insurer to have the court declare the rights and obligations of the insurers under their policies of insurance, is not the type of case to which this section was intended to apply. Aetna Cas. & Sur. Co. v. Lumbermen's Mut. Cas. Co., 11 N.C. App. 490, 181 S.E.2d 727 (1971).

This section does not make the merchant who supplies parts or the mechanic who performs work and supplies parts responsible for the operation of a repaired or rebuilt motor vehicle. Rick v. Murphy, 251 N.C. 162, 110 S.E.2d 815 (1959), holding garage operator who supplied body from wrecked car he owned to be used with parts from customer's wrecked car to make a motor vehicle for the customer was not owner of such motor vehicle.

This section applies to an accident occurring prior to its effective date, unless an action was pending at the time of its effective date. Spencer v. McDowell Motor Co., 236 N.C. 239, 72 S.E.2d 598 (1952).

This section merely creates a rule of evidence. Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966).

This section creates a rule of evidence, and has no other or further force or effect. Mitchell v. White, 256 N.C. 437, 124 S.E.2d 137 (1962).

This section was designed to create a rule of evidence. Its purpose is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another. It does not have, and was not intended to have, any other or further force or effect. Hartley v. Smith, 239 N.C. 170, 79 S.E.2d 767 (1954). See also, Roberts v. Hill, 240 N.C. 373, 82 S.E.2d 373 (1954); Osborne v. Gilreath, 241 N.C. 685, 86 S.E.2d 462 (1955); Elliott v. Killian, 242 N.C. 471, 87 S.E.2d 903 (1955); Fox v. Albea, 250 N.C. 445, 109 S.E.2d 197 (1959); Lynn v. Clark, 252 N.C. 289, 113 S.E.2d 427 (1960); Howard v. Sasso, 253 N.C. 185, 116 S.E.2d 341 (1960); Taylor v. Parks, 254 N.C. 266, 118 S.E.2d 779 (1961); Chappell v. Dean, 258 N.C. 412, 128 S.E.2d 830 (1963).

This section was designed and intended to, and does, establish a rule of evidence which facilitates proof of ownership and agency in automobile collision cases where one of the vehicles is operated by a person other than the owner. It was not enacted and designed to render proof unnecessary, nor does proof of registration or ownership make out a prima facie case for the jury on the issue of negligence. Neither is it sufficient to send the case to the jury, or support a finding favorable to plaintiff under the negligence issue, or to support a finding against a defendant on the issue of negligence. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

The presumption of this section relates to the rule of evidence and procedure rather than to substantive rights. Randall Ins., Inc. v. O'Neill, 258 N.C. 169, 128 S.E.2d 239 (1962).

This section is simply a rule of evidence to shift the burden of going forward with the proof to those persons better able to establish the true facts than are plaintiffs. Manning v. State Farm Mut. Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965).

The prima facie showing of agency under subsection (b) is a rule of evidence and not one of substantive law. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

G.S. 20-71.1 was a rule of evidence, not a rule of law, and, contrary to a passenger's assertion, an estate's admission that the decedent owned the motor vehicle involved in a traffic accident did not suffice to establish a prima facie case of liability against the estate under the legal doctrine of respondeat superior; the dismissal of the passenger's claim against the estate based on the decedent's ownership of the auto was proper because the claim against the driver was a claim against an agent, and, since the driver was named as a party, proper service was required. Because the summons as to the driver was allowed to lapse and the statute of limitations had since run, the driver had no liability to impute to the estate, and neither the driver nor the estate could have been determined judicially to have been negligent. Atkinson v. Lesmeister, 186 N.C. App. 442, 651 S.E.2d 294, 2007 N.C. App. LEXIS 2203 (2007).

And Does Not Change Basic Rule as to Liability. — This section did not change the basic rule as to liability. It did establish a new rule of evidence, changing radically the requirements as to what the injured plaintiff must show in evidence in order to have his case passed on by the jury. Jyachosky v. Wensil, 240 N.C. 217, 81 S.E.2d 644 (1954).

Or Change Prerequisites to Liability under Doctrine of Respondeat Superior. — This section did not change the elements prerequisite to liability under the doctrine of respondeat superior. To establish liability under this doctrine, the injured plaintiff must allege and prove that the operator was the agent of the owner, and that this relationship existed at the time and in respect of the very transaction out of which the injury arose. Whiteside v. McCarson, 250 N.C. 673, 110 S.E.2d 295 (1959); Belmany v. Overton, 270 N.C. 400, 154 S.E.2d 538 (1967).

It is elementary that a principal or employer is not liable for injury due to a negligent act or omission of his agent or employee when such agent or employee had departed from the course of his employment and embarked upon a mission or frolic of his own. Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966).

Nor does this section abrogate the well-settled rule of law that mere ownership of an automobile does not impose liability upon the owner for injury to another by the negligent operation of the vehicle on the part of a driver who was not, at the time of the injury, the employee or agent of the owner or who was not, at such time, acting in the course of his employment or agency. Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966).

Proof that one owns a motor vehicle which is operated in a negligent manner, causing injury to another, is not sufficient to impose liability on the owner. The injured party, if he is to recover from the owner, must allege and prove facts (1) calling for an application of the doctrine of respondeat superior, or (2) negligence of the owner himself in (a) providing the driver with a vehicle known to be dangerous because of its defective condition, or (b) permitting a known incompetent driver to use the vehicle on the highway. Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1963).

Or Compel a Verdict Against Owner. — Proof of ownership of the automobile by one not the driver makes out a prima facie case of agency of the driver for the owner at the time of the driver's negligent act or omission, but it does not compel a verdict against the owner upon the principle of respondeat superior.

Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966).

The rule of evidence established by this section applies whenever a factual determination as to alleged agency is to be made, whether by the court to resolve a question of fact or by a jury to resolve an issue of fact. Howard v. Sasso, 253 N.C. 185, 116 S.E.2d 341 (1960).

The relationship of lessor and lessee is not that of principal and agent. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Proof of ownership is prima facie proof of agency. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Upon a showing of ownership, the artificial force of the prima facie rule under this section seems to permit a finding of agency. Torres v. Smith, 269 N.C. 546, 153 S.E.2d 129 (1967).

Evidence of ownership and registration of a motor vehicle involved in a collision must, by force of this statute, be regarded as prima facie evidence that at the time and place of the injury caused by it the motor vehicle was being operated with the authority, consent and knowledge and under the control of a person for whose conduct the defendant was legally responsible. Allen v. Schiller, 6 N.C. App. 392, 169 S.E.2d 924 (1969).

Where the owner of equipment leased both the equipment and operator to another under circumstances wherein the owner retained control over the manner in which the equipment was to be operated, the operator may have been the agent of the owner-lessor. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Where an owner of a truck leased both the truck and driver to another, the operator of the truck was not thereafter the agent of the owner if by the terms of the lease itself or other circumstances the owner relinquished all right to control the truck's operation. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Given that plaintiffs alleged that defendants owned the tractor that defendant driver was driving at the time of a wreck and the evidence indicated that they were the tractor's owners, plaintiffs were entitled to rely upon the statutory presumption of control under G.S. 20.71.1(b), and therefore established a prima facie case of a principal-agent relationship between the defendants as the tractor's owners and defendant the driver of the tractor. Shinn v. Greeness, 218 F.R.D. 478, 2003 U.S. Dist. LEXIS 20872 (M.D.N.C. 2003).

And Is Sufficient to Take Case to Jury. — Proof of ownership of the motor vehicle involved in the injury complained of, by force of this section, must be regarded as sufficient to carry the case to the jury on the question of the legal responsibility of the defendant for the operation of the vehicle. Travis v. Duckworth, 237 N.C. 471, 75 S.E.2d 309 (1953); Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956); Scott v. Lee, 245 N.C. 68, 95 S.E.2d 89 (1956); Johnson v. Wayne Thompson, Inc., 250 N.C. 665, 110 S.E.2d 306 (1959).

Where there is sufficient evidence of negligence of the operator of a motor vehicle to be submitted to the jury on that issue, evidence that the vehicle was registered in the name of another defendant takes the issue of such other defendant's liability to the jury. Ennis v. Dupree, 258 N.C. 141, 128 S.E.2d 231 (1962).

This section is construed to mean that proof of ownership alone carries the case to the jury on the issue of agency. Humphries v. Going, 59 F.R.D. 583 (E.D.N.C. 1973).

An admission of the ownership of one of the vehicles involved in a collision is sufficient to make out a prima facie case of agency sufficient to support, but not to compel, a verdict against the owner under the doctrine of respondeat superior for damages proximately caused by the negligence of the driver. Hartley v. Smith, 239 N.C. 170, 79 S.E.2d 767 (1954); Elliott v. Killian, 242 N.C. 471, 87 S.E.2d 903 (1955); Davis v. Lawrence, 242 N.C. 496, 87 S.E.2d 915 (1955); Hatcher v. Clayton, 242 N.C. 450, 88 S.E.2d 104 (1955); Caughron v. Walker, 243 N.C. 153, 90 S.E.2d 305 (1955); Brown v. Nesbitt, 271 N.C. 532, 157 S.E.2d 85 (1967); Scallon v. Hooper, 49 N.C. App. 113, 270 S.E.2d 496 (1980), cert. denied, 301 N.C. 722, 276 S.E.2d 284 (1981); Norman v. Royal Crown Bottling Co., 49 N.C. App. 661, 272 S.E.2d 355 (1980).

Admission of ownership of the vehicle involved in the collision requires the submission to the jury of the question of liability under the doctrine of respondeat superior. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Admission by defendant truck owner that his truck was being operated by codefendant was sufficient, as against such owner, to permit a finding that codefendant was driving the truck and, therefore, to bring into operation this section, making such fact prima facie proof that codefendant was the agent of the truck owner and was driving the truck in the course of his employment as such agent. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

And to Entitle Plaintiff to Instruction on Section. — Plaintiff in a wrongful death action was entitled to an instruction, even absent a special request by plaintiff, on this section, where it was stipulated that one defendant who was not the driver was the registered owner of the vehicle at the time of the accident, and an instruction on the statute was required even though plaintiff presented no positive evidence that defendant driver was defendant owner's agent. Scallon v. Hooper, 49 N.C. App. 113, 270 S.E.2d 496 (1980), cert. denied, 301 N.C. 722, 276 S.E.2d 284 (1981).

Plaintiff was entitled to have his case submitted to the jury where defendant admitted ownership of the automobile and conceded that it was registered in his name. White v. Vananda, 13 N.C. App. 19, 185 S.E.2d 247 (1971).

Proof of legal title to an automobile makes at least a prima facie showing of ownership in the one in whose name the title is registered. Guilford Nat'l Bank v. Southern Ry., 319 F.2d 825 (4th Cir. 1963), cert. denied, 375 U.S. 985, 84 S. Ct. 518, 11 L. Ed. 2d 473 (1964).

Under this section all that is now required for submission of the issue to the jury is that the injured party show ownership of the motor vehicle, which may be done prima facie by proof that the motor vehicle was registered in the name of the person sought to be charged. Jyachosky v. Wensil, 240 N.C. 217, 81 S.E.2d 644 (1954).

Proof of registration of a motorcycle in the name of driver's father was prima facie evidence of ownership by him and agency in the driver under this section. Such prima facie evidence of ownership in the father was sufficient to carry the case to the jury against him, notwithstanding that further evidence was sufficient, if true, to rebut the prima facie evidence that the father owned the motorcycle and that the minor was driving it as his agent. Bowen v. Gardner, 275 N.C. 363, 168 S.E.2d 47 (1969).

But Prima Facie Case of Agency Does Not Compel a Verdict against Defendant. — This section makes out a prima facie case of agency which will support, but does not compel, a verdict against defendant upon the principle of respondeat superior. Chappell v. Dean, 258 N.C. 412, 128 S.E.2d 830 (1963).

While this section makes admitted ownership of a truck prima facie evidence that the operator was acting as the owner's agent or employee within the scope of his employment, sufficient to carry the case to the jury, it does not compel the finding by the jury that the driver was negligent or that he was the agent or employee of the owner and at the time acting within the scope of his employment. Brothers v. Jernigan, 244 N.C. 441, 94 S.E.2d 316 (1956).

Where a trial judge is presented only with a prima facie showing of agency mandated by subsection (b) on the one hand, and defendant's evidence establishing the absence of agency on the other, the only issue becomes whether the judge believes defendant's evidence. If the judge does, then plaintiff's prima facie showing disappears and the judge must conclude that no agency relationship exists. If he does not believe defendant's evidence, then he may conclude for plaintiff on the agency issue. Either conclusion must be based on proper findings. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

The prima facie showing of agency under this section only permits, and does not compel, a finding for the plaintiff on the issue of agency. Thompson v. Three Guys Furn. Co., 122 N.C. App. 340, 469 S.E.2d 583 (1996).

The prima facie showing of agency under G.S. 20-71.1(b) is a rule of evidence and not one of substantive law. The statute makes out a prima facie case which, nothing else appearing, permits but does not compel a finding for plaintiff on the issue of agency. Shinn v. Greeness, 218 F.R.D. 478, 2003 U.S. Dist. LEXIS 20872 (M.D.N.C. 2003).

As Plaintiff Has Burden of Proving Agency. — Proof of registration or admission of ownership furnishes, by virtue of the statute, prima facie evidence that the driver was agent of the owner in the operation, and is sufficient to support, but not compel, a verdict on the agency issue. It takes the issue to the jury. Even so, plaintiff must allege, and has the burden of proving, agency. Mitchell v. White, 256 N.C. 437, 124 S.E.2d 137 (1962).

The burden of proof continues to rest upon the plaintiff to prove an agency relationship between the driver and the owner at the time of the driver's negligence which caused the injury. Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966).

This section creates no presumption of law, and it does not shift the burden of the issue from plaintiff to defendant. Chappell v. Dean, 258 N.C. 412, 128 S.E.2d 830 (1963).

This section does not relieve plaintiff of the duty to allege and the burden of proving agency. Chappell v. Dean, 258 N.C. 412, 128 S.E.2d 830 (1963).

Trial court incorrectly denied defendants' motions under G.S. 1A-1, Rule 50(a); this section merely provides prima facie evidence of motor vehicle ownership, but does not remove plaintiff's burden of proof as to agency which, in this case, he failed to carry as to the first defendant and which issue the court removed in error from the jury as to the second defendant. Winston v. Brodie, 134 N.C. App. 260, 517 S.E.2d 203 (1999).

And Alleging Ultimate Facts. — The provisions of this section are a rule of evidence and do not relieve a plaintiff of alleging the ultimate facts on which to base a cause of actionable negligence. Parker v. Underwood, 239 N.C. 308, 79 S.E.2d 765 (1954).

Both Negligence and Agency Must Be Alleged and Proved by Plaintiff. — This section was not enacted and designed to render proof unnecessary, nor does proof of registration or ownership make out a prima facie case for the jury on the issue of negligence. Neither is it sufficient to send the case to the jury, or to support a finding favorable to plaintiff under the negligence issue, or to support a finding against a defendant on the issue of negligence. It does not constitute evidence of negligence. It is instead directed solely to the question of agency of a nonowner operator of a motor vehicle involved in an accident. It is still necessary for the party aggrieved to allege both negligence and agency in his pleading and to prove both at the trial. Hartley v. Smith, 239 N.C. 170, 79 S.E.2d 767 (1954).

It is still necessary for the party aggrieved to allege both negligence and agency in his pleading and to prove both at the trial. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965); Belmany v. Overton, 270 N.C. 400, 154 S.E.2d 538 (1967).

This section establishes a rule of evidence, but does not relieve a plaintiff from alleging and proving negligence and agency. Osborne v. Gilreath, 241 N.C. 685, 86 S.E.2d 462 (1955).

This section presupposes a cause of action based on allegations of agency and of actionable negligence, and therefore, if the complaint fails to allege agency or actionable negligence, it is demurrable and is insufficient to support a verdict for damages against the owner of the vehicle. Lynn v. Clark, 252 N.C. 289, 113 S.E.2d 427 (1960).

While proof of registration is prima facie evidence of ownership and that the agent was acting for the owner's benefit and in the scope of his employment, there must be an allegation of agency to make evidence of agency admissible against the principal. Dupree v. Batts, 276 N.C. 68, 170 S.E.2d 918 (1969).

Defendant's admission and stipulation that the automobile involved in the accident was registered in her name was evidence sufficient to support, but not compel, a finding for plaintiffs that defendant was legally responsible for the acts and omissions of the codefendant in the operation and parking of the automobile; but before plaintiffs could recover, they had to prove by evidence competent against the owner defendant that the codefendant was negligent and that her negligence was the proximate cause of plaintiffs' damages. Tuttle v. Beck, 7 N.C. App. 337, 172 S.E.2d 90 (1970).

As absent evidence that defendant is the owner of the vehicle, plaintiff is not entitled to the benefit of this section. Freeman v. Biggers Bros., 260 N.C. 300, 132 S.E.2d 626 (1963).

Where plaintiff offered no evidence to support her allegation that defendant was the registered owner of an automobile operated by his son, she could not benefit by the presumption of agency created by this section. Griffin v. Pancoast, 257 N.C. 52, 125 S.E.2d 310 (1962).

The ultimate issue is for jury determination, notwithstanding that the only positive evidence tends to show explicitly and clearly that the operator, whether driving with or without the owner's consent, was on a purely personal mission at the time of the collision. Whiteside v. McCarson, 250 N.C. 673, 110 S.E.2d 295 (1959).

By reason of this section, the agency issue is for determination by the jury. Moore v. Crocker, 264 N.C. 233, 141 S.E.2d 307 (1965); Allen v. Schiller, 6 N.C. App. 392, 169 S.E.2d 924 (1969).

License Plates as Prima Facie Evidence of Ownership. — A prima facie case of ownership was made out by virtue of this section when license plates issued to driver were on the vehicle, even though the car described on the registration did not have the same body style as the vehicle actually being driven. Rick v. Murphy, 251 N.C. 162, 110 S.E.2d 815 (1959).

Name on Vehicle as Prima Facie Evidence of Ownership. — Where common carrier of freight operated tractor-trailer units on public highway bearing the insignia or name of such carrier, and one of their motor vehicles was involved in a collision or inflicts injury upon another, evidence that the name or insignia of the defendant was painted or inscribed on the motor vehicle which inflicted the injury constituted prima facie evidence that the defendant was the owner of such vehicle and that the driver thereof was operating it for and on behalf of defendant. Freeman v. Biggers Bros., 260 N.C. 300, 132 S.E.2d 626 (1963).

Rebuttal of Presumption of Agency by Plaintiff's Own Evidence. — Where defendant admitted that, at the time of the accident, he was the owner of one of the vehicles involved in the collision, but plaintiff elicited testimony from her own witnesses of declarations made by defendant to the effect that, at the time in question, the driver had taken defendant's automobile without defendant's authorization, knowledge or consent, and was not at the time defendant's agent or employee or acting in the course and scope of any employment by defendant, plaintiff's own evidence rebutted the presumption created by this section, and such evidence not being contradicted by any other evidence of either plaintiff or defendant, nonsuit on the issue of agency was proper. Taylor v. Parks, 254 N.C. 266, 118 S.E.2d 779 (1961).

No Presumption or Inference of Agency before or after Operation of Vehicle. — This section creates no presumption and gives rise to no inference as to the existence of any agency relation before the operation of the vehicle begins or after it stops. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

In the absence of evidence of agency, apart from the mere act of driving a motor vehicle registered in the name of another, the agency must be deemed to have terminated when the driver has brought the vehicle to a final stop and has left it. Branch v. Dempsey, 265 N.C.

733, 145 S.E.2d 395 (1965).

Whenever the facts with respect to agency are established, without contradiction, it is the duty of the court to disregard this section, even to the point of setting aside a verdict which this section permits. Manning v. State Farm Mut. Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965).

Peremptory Instruction in Defendant's Favor Where Driver Was on a Purely Personal Mission. — Where ownership of the vehicle involved was sufficient to take the case to the jury under this section, the trial court's directed verdict in favor of defendant owner was harmless error where the evidence clearly established that the driver of the vehicle was on a purely personal mission at the time of the accident, thereby entitling defendant, without request, to a peremptory instruction on the issue of the owner's liability. Gwaltney v. Keaton, 29 N.C. App. 91, 223 S.E.2d 506 (1976).

Where plaintiff relied solely on this section to take the issue of agency to the jury, and defendant's evidence tended to show that the driver was on a purely personal mission at the time of the accident, defendant, without request therefor, was entitled to a peremptory instruction, related directly to the particular facts shown by defendant's positive evidence, to answer the issue of agency in the negative. A general instruction to so answer the issue if the jury believed the facts to be as defendant's evidence tended to show, without relating the instruction directly to defendant's evidence in the particular case, was insufficient. Belmany v. Overton, 270 N.C. 400, 154 S.E.2d 538 (1967).

In any case in which a plaintiff, as against the registered owner of a motor vehicle, relied solely upon this section to prove the agency of a nonowner operator, and in which all of the positive evidence in the case was to the effect that the operator was on a mission of his own and not on any business for the registered owner, it was the duty of the trial judge, even if there was evidence that the registered owner gave the operator permission to use the vehicle, to instruct the jury that, if they believed the evidence and found the facts to be as the evidence tended to show, that is, that the operator was on a mission of his own, they would answer the agency issue in the negative. And it was prejudicial error for the court, in such circumstances, to fail to so instruct the jury, even if there was no special request therefor. Chappel v. Dean, 258 N.C. 412, 128 S.E.2d 830 (1963).

Where plaintiff relies solely on the provisions of this section on the issue of respondeat superior and introduces no evidence, but defendant introduces evidence tending to show that the driver was on a purely personal mission of his own at the time of the accident, there is no evidence upon which the court may instruct the jury in plaintiff's favor on the issue, and the court's explanation of the rule of evidence prescribed by the statute is sufficient; but as to the defendant's evidence, the court is required, even in the absence of a request for special instructions, to give an explicit instruction applying defendant's evidence to the issue and charging that if the jury should find the facts to be as defendant's evidence tends to show, the issue should be answered in the negative. Whiteside v. McCarson, 250 N.C. 673, 110 S.E.2d 295 (1959).

Where evidence disclosed that an employee was driving vehicle registered in the name of his employer, and there was also evidence that the employee was driving on the occasion in question on a purely personal mission without the knowledge or consent of the employer, the court properly submitted the issue of the employer's liability to the jury under instructions that if the jury should find that the employee was engaged in a purely personal mission without the knowledge or consent of the employer the jury should answer the issue in the negative. Skinner v. Jernigan, 250 N.C. 657, 110 S.E.2d 301 (1959).

Defendant was entitled to a peremptory instruction when plaintiff relied solely on this section and defendant offered uncontradicted evidence on the issue of agency tending to show that the driver was on a purely personal mission or errand at the time of the collision; but there is no authority that a peremptory instruction may be given in favor of a defendant who offers no evidence whatsoever on the critical issue. Scallon v. Hooper, 49 N.C. App. 113, 270 S.E.2d 496 (1980), cert. denied, 301 N.C. 722, 276 S.E.2d 284 (1981).

Where plaintiff relied solely upon subsection (b), presenting no other evidence of agency, and defendant presented positive, contradicting evidence which, if believed, established the nonexistence of an agency relationship between owner and operator, defendant was entitled to a peremptory instruction on the agency, issue, or in a nonjury hearing, to a conclusion, based on proper findings, that no agency relationship existed. The statutory presumption is not weighed against defendant's evidence by the trier of facts. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Instruction Where Evidence Shows That Driver Was Co-Owner with Registered Owner. — Evidence that a vehicle operated by a woman was registered in the name of her husband was prima facie evidence that she was driving as his agent, but even so, parol evidence was competent to show that the husband and wife were in fact co-owners, and when there was such evidence, it was error for the court to peremptorily instruct the jury to answer the issue of agency in the affirmative. Rushing v. Polk, 258 N.C. 256, 128 S.E.2d 675 (1962).

A model instruction is available as a guide for explaining this section to the jury. Scallon v. Hooper, 49 N.C. App. 113, 270 S.E.2d 496 (1980), cert. denied, 301 N.C. 722, 276 S.E.2d 284 (1981).

The instruction must relate directly to particular facts shown by defendant's positive evidence. Scallon v. Hooper, 49 N.C. App. 113, 270 S.E.2d 496 (1980), cert. denied, 301 N.C. 722, 276 S.E.2d 284 (1981).

Right to Have Owner Joined for Contribution. — Where, in an action by a passenger against the drivers involved in a collision, plaintiff made out a prima facie case of negligence on the part of the driver of the car, proof or admissions that additional defendant was the registered owner of the car established prima facie that the driver was such owner's agent and was acting in the course and scope of the employment, and entitled the defendants to have the owner of the car joined for contribution. McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964).

Service on Nonresident Owner of Vehicle. — Under this section, ownership of a vehicle involved in an accident is sufficient proof of agency to support service of process on the nonresident owner whose agent is alleged to have negligently injured plaintiff by operation of the vehicle on North Carolina highways. Todd v. Thomas, 202 F. Supp. 45 (E.D.N.C. 1962). See also Davis v. St. Paul-Mercury Indem. Co., 294 F.2d 641 (4th Cir. 1961).

Compulsory Nonsuit Held Error. — Where a judgment of compulsory nonsuit of plaintiff's action against a defendant who was the driver of the automobile involved in the action was improvidently entered, the trial court also erred in entering a judgment of compulsory nonsuit against another defendant, for the reason that the automobile was registered in the latter's name, and therefore plaintiff was entitled to go to the jury against him by virtue of the provisions of this section. Hamilton v. McCash, 257 N.C. 611, 127 S.E.2d 214 (1962).

Imputation to Husband of Wife's Negligence Held Improper. — Where title to an automobile stood in wife's name, imputation to her husband of her alleged negligence in driving the vehicle while her husband was riding as a passenger in the automobile could not be predicated upon evidence showing that the husband made deferred payments on the purchase price of the car, paid the expenses incident to maintaining the car, and treated the car for tax purposes as a depreciable asset of his business enterprise. Guilford Nat'l Bank v. Southern Ry., 319 F.2d 825 (4th Cir. 1963), cert. denied, 375 U.S. 985, 84 S. Ct. 518, 11 L. Ed. 2d 473 (1964).

Owner-occupant of car ordinarily has the right to direct its operation by the driver. Randall v. Rogers, 262 N.C. 544, 138 S.E.2d 248 (1964).

Hence, he is responsible for driver's negligence irrespective of agency, as such, and the provisions of this section. Randall v. Rogers, 262 N.C. 544, 138 S.E.2d 248 (1964).

Applied in Hensley v. Harris, 242 N.C. 599, 89 S.E.2d 155 (1955); Knight v. Associated Transp., Inc., 255 N.C. 462, 122 S.E.2d 64 (1961); Tharpe v. Newman, 257 N.C. 71, 125 S.E.2d 315 (1962); Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962); Salter v. Lovick, 257 N.C. 619, 127 S.E.2d 273 (1962); Smith v. Simpson, 260 N.C. 601, 133 S.E.2d 474 (1963); Yates v. Chappell, 263 N.C. 461, 139 S.E.2d 728 (1965); Passmore v. Smith, 266 N.C. 717, 147 S.E.2d 238 (1966); Jackson v. Baldwin, 268 N.C. 149, 150 S.E.2d 37 (1966); Morris v. Bigham, 6 N.C. App. 490, 170 S.E.2d 534 (1969); Nolan v. Boulware, 21 N.C. App. 347, 204 S.E.2d 701 (1974); Jones v. Allred, 52 N.C. App. 38, 278 S.E.2d 521 (1981); Hargett v. Reed, 95 N.C. App. 292, 382 S.E.2d 791 (1989); Brewer v. Spivey, 108 N.C. App. 174, 423 S.E.2d 95 (1992).

Cited in State v. Scoggin, 236 N.C. 19, 72 S.E.2d 54 (1952); Chatfield v. Farm Bureau Mut. Auto. Ins. Co., 208 F.2d 250 (4th Cir. 1953); Northwest Cas. Co. v. Kirkman, 119 F. Supp. 828 (M.D.N.C. 1954); Ransdell v. Young, 243 N.C. 75, 89 S.E.2d 773 (1955); Williamson v. Varner, 252 N.C. 446, 114 S.E.2d 92 (1960); Tart v. Register, 257 N.C. 161, 125 S.E.2d 754 (1962); Parlier v. Barnes, 260 N.C. 341, 132 S.E.2d 684 (1963); Perkins v. Cook, 272 N.C. 477, 158 S.E.2d 584 (1968); United Roasters, Inc. v. Colgate-Palmolive Co., 485 F. Supp. 1049 (E.D.N.C. 1980); Duffer v. Royal Dodge, Inc., 51 N.C. App. 129, 275 S.E.2d 206 (1981); Cranford v. Helms, 53 N.C. App. 337, 280 S.E.2d 756 (1981); Mercer v. Crocker, 73 N.C. App. 634, 327 S.E.2d 31 (1985); Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986); State v. Williams, 90 N.C. App. 120, 367 S.E.2d 345 (1988); Tittle v. Case, 101 N.C. App. 346, 399 S.E.2d 373 (1991).

Part 3A. Salvage Titles.

§ 20-71.2. Declaration of purpose.

The titling of salvage motor vehicles constitutes a problem in North Carolina because members of the public are sometimes misled into believing a motor vehicle has not been damaged by collision, fire, flood, accident, or other cause or that the vehicle has not been altered, rebuilt, or modified to such an extent that it impairs or changes the original components of the motor vehicle. It is therefore in the public interest that the Commissioner of Motor Vehicles issue rules to give public notice of the titling of such vehicles and to carry out the provisions of this Part of the motor vehicle laws of North Carolina. (1987, c. 607, s. 1.)

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Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

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Main Objective of Section to Preserve Information of Prior History of Damaged Vehicles. — In this section the General Assembly clearly indicated that its main objective in enacting Session Laws 1987, c. 607, was to preserve information regarding the prior history of damaged vehicles for the benefit of subsequent buyers. Any reading of the statute contrary to that purpose would be inappropriate. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

§ 20-71.3. Salvage and other vehicles — titles and registration cards to be branded.

(a) Motor vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded in accordance with this section.

As used in this section, "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Salvage Motor Vehicle.
(2) Salvage Rebuilt Vehicle.
(3) Reconstructed Vehicle.
(4) Flood Vehicle.
(5) Non-U.S.A. Vehicle.
(6) Any other classification authorized by law.

(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the title and registration card marked "TOTAL LOSS CLAIM".
(2) Have a tamperproof permanent marker inserted into the doorjamb of that vehicle by the Division, at the time of the final inspection of the reconstructed vehicle, that states "TOTAL LOSS CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a permanent tamperproof marker shall be inserted in the doorjamb of the reconstructed, repaired, or rebuilt vehicle.

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to preliminary and final inspections by the Enforcement Section of the Division. For purposes of this section, the term "six model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle.

(c) The Division shall not retitle a vehicle described in subsection (b) of this section that has not undergone the preliminary and final inspections required by that subsection.

(d) Any motor vehicle up to and including six model years old that has been inspected pursuant to subsection (b) of this section may be retitled with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.
(5) The existence, if applicable, of the doorjamb "TOTAL LOSS CLAIM VEHICLE" marker.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(e) Any motor vehicle more than six model years old damaged by collision or other occurrence that is to be retitled by the State may be retitled, without inspection, with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.
(5) The existence, if applicable, of the doorjamb "TOTAL LOSS CLAIM VEHICLE" marker.
(6) The cost to replace the air bag restraint system.

The unbranded title shall be issued only if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, does not exceed seventy-five percent (75%) of its fair market retail value.

(f) The Division shall maintain the affidavits required by this section and make them available for review and copying by persons researching the salvage and repair history of the vehicle.

(g) Any motor vehicle that has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered.

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued as follows:

(1) For motor vehicles up to and including six model years old, a branded title shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.
(2) For motor vehicles more than six model years old, a branded title shall be issued if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

(j) The Division shall prepare necessary forms and doorjamb marker specifications and may adopt rules required to carry out the provisions of this Part. (1987, c. 607, s. 1; 1987 (Reg. Sess., 1988), c. 1105, s. 2; 1989, c. 455, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 916, s. 1; 1997-443, s. 32.26; 1998-212, s. 27.8(a); 2003-258, s. 1.)

Editor's Note. — Session Laws 2001-492, s. 5, effective December 4, 2001, provides: "The Division of Motor Vehicles shall issue or reissue an unbranded title for vehicles titled in this State between July 20, 2001, and November 1, 2001, pursuant to G.S. 20-71.3 if the vehicle was a motor vehicle damaged by collision or other occurrence and if the cost of repairs, including parts, did not exceed seventy-five percent (75%) of its fair market value. Transfers of vehicles issued or reissued unbranded titles pursuant to this section [s. 5 of Session Laws 2001-492] shall be subject to the disclosure requirements of G.S. 20-71.4." Initially s. 6 of Session Laws 2001-492, had provided a November 1, 2001, sunset for s. 5. However, Session Laws 2001-487, s. 123.5 deleted the sunset provision.

Legal Periodicals. — See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

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"Satisfactory evidence" in order for the division to issue an unbranded title, if the vehicle also met the 75% standard of this section, would be evidence satisfactory to the division that the vehicle which was the subject of the application would meet requirements of the titling state for an unbranded title if repaired in that state. This could be a copy of the titling state's statutory or regulatory process if clear, and otherwise, a statement from an authorized official within the titling agency confirming the vehicle meets the criteria of their state for an unbranded title. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

Section Requires Applicant to Provide "Satisfactory Evidence". — This section requires that the applicant for a North Carolina title provide the "satisfactory evidence" of the vehicle's eligibility for an unbranded title in the state where currently titled. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

Satisfactory Evidence Would Have to Be Vehicle Specific. — The "satisfactory evidence" for issuance of an unbranded title would have to be vehicle specific. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

If the titling state has no procedure for removing a brand on a salvage vehicle title, North Carolina has no means by which an unbranded title can be issued here. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

The date of application for a title determines which law to apply for purposes of processing salvage title vehicles. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

Records of Disclosure Forms. — The Division of Motor Vehicles may prepare forms to carry out the provisions of this section, but there is no requirement that it keep records of the disclosure forms it may create. However, while there is no statutory provision requiring the division to disclose a prior title history showing that a vehicle was once damaged, there is no prohibition against this practice as a public service if the division should voluntarily undertake to do it. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

Vehicle declared total loss by insurer does not have to meet 75% test to be salvage vehicle. The tests are independent. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

This section provides no basis for DMV to relax 75% of repair cost factor in determining if vehicle is salvage under subdivision (d) of § 20-4-01(33). The standard is mandated by statute. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

No procedure which allows DMV to avoid branding title of motor vehicle, branded in another state, with the nearest applicable brand specified in the new North Carolina statute. The requirement in this section is mandatory and does not authorize reevaluation of the branding decision that was made in another state. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

(1) Transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(a1) For purposes of this section, the term "five model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year. Failure to disclose any of the information required under subsection (a) of this section that is within the knowledge of the transferor will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker that is affixed to the doorjamb of any total loss claim vehicle. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker to the doorjamb of the rebuilt vehicle. Violation of this subsection shall constitute a Class I felony, punishable by a fine of not less than five thousand dollars ($5,000) for each offense.

(d) Violation of subsections (a) and (b) of this section shall constitute a Class 2 misdemeanor.

(e) The provisions of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad. (1987, c. 607, s. 1; 1987 (Reg. Sess., 1988), c. 1105, s. 3; 1989, c. 455, s. 4; 1989 (Reg. Sess., 1990), c. 916, s. 2; 1993, c. 539, s. 337; 1994, Ex. Sess., c. 24, s. 14(c); 1998-212, s. 27.8(b); 2003-258, s. 2; 2009-550, s. 2(a).)

Editor's Note. — Session Laws 2001-492, s. 5, effective December 4, 2001, provides: "The Division of Motor Vehicles shall issue or reissue an unbranded title for vehicles titled in this State between July 20, 2001, and November 1, 2001, pursuant to G.S. 20-71.3 if the vehicle was a motor vehicle damaged by collision or other occurrence and if the cost of repairs, including parts, did not exceed seventy-five percent (75%) of its fair market value. Transfers of vehicles issued or reissued unbranded titles pursuant to this section [s. 5 of Session Laws 2001-492] shall be subject to the disclosure requirements of G.S. 20-71.4." Initially s. 6 of Session Laws 2001-492, had provided a November 1, 2001, sunset for s. 5. However, Session Laws 2001-487, s. 123.5 deleted the sunset provision.

Effect of Amendments. — Session Laws 2009-550, s. 2(a), effective August 28, 2009, added subsection (e).

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Fraudulent Intent Must Be Pleaded for Civil Liability. — In order to properly plead a cause of action under this section and G.S. 20-348(a), a plaintiff must allege fraudulent intent in addition to a violation of the provisions of this section. Bowman v. Alan Vester Ford Lincoln Mercury, 151 N.C. App. 603, 566 S.E.2d 818, 2002 N.C. App. LEXIS 886 (2002).

Damage to Vehicle Obvious. — Where defendant ignored statements made by the previous owner, signs of damage to the truck, and owner failed to provide a damage disclosure statement to plaintiff, defendant was either grossly negligent or recklessly disregarded indications made by the previous owner, and knew or reasonably should have known of damage to the vehicle which exceeded twenty-five percent (25%) of the vehicle's fair market value. Payne v. Parks Chevrolet, Inc., 119 N.C. App. 383, 458 S.E.2d 716 (1995).

Defendants violated this section and § 75-1.1 when they did not give plaintiffs a written damage disclosure statement that van had been involved in a collision to the extent that the cost of the van's repairs exceeded twenty-five percent of its fair market retail value. Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

Defendants committed unfair and deceptive trade practices where car sold by defendants was severely structurally damaged, was not safe to operate, and plaintiff was misled by defendants into believing otherwise. Huff v. Autos Unlimited, Inc., 124 N.C. App. 410, 477 S.E.2d 86 (1996), cert. denied, 346 N.C. 279, 486 S.E.2d 546 (1997).

Cited in Blankenship v. Town & Country Ford, Inc., 155 N.C. App. 161, 574 S.E.2d 132, 2002 N.C. App. LEXIS 1599 (2002).

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Subsection (a) Requirement Falls on Person Who Knows About Damage. — The requirement in subsection (a) of this section that a written disclosure of damage that exceeds 25% of the vehicle's fair market value be given to the buyer prior to transfer falls upon any person who knows or reasonably should know about the damage. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

Records of Disclosure Forms. — The Division of Motor Vehicles may prepare forms to carry out subsection (a) of this section, but there is no requirement that it keep records of the disclosure forms it may create. However, while there is no statutory provision requiring the division to disclose a prior title history showing that a vehicle was once damaged, there is no prohibition against this practice as a public service if the division should voluntarily undertake to do it. See opinion of Attorney General to Ms. Carol Nemitz, Director, Vehicle Registration Section, Division of Motor Vehicles, 59 N.C.A.G. 48 (1989).

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner.

(a) Whenever the owner of a registered vehicle transfers or assigns his title or interests thereto, he shall remove the license plates. The registration card and plates shall be forwarded to the Division unless the plates are to be transferred to another vehicle as provided in G.S. 20-64. If they are to be transferred to and used with another vehicle, then the endorsed registration card and the plates shall be retained and preserved by the owner. If such registration plates are to be transferred to and used with another vehicle, then the owner shall make application to the Division for assignment of the registration plates to such other vehicle under the provisions of G.S. 20-64. Such application shall be made within 20 days after the date on which such plates are last used on the vehicle to which theretofore assigned.

(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this Article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Division, including in such assignment the name and address of the transferee;

and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer title to another by certifying in writing in a sworn statement to the Division that all prior perfected liens on the vehicle have been paid and that the motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title. The Division is authorized to develop a form for this purpose. The filing of a false sworn certification with the Division pursuant to this paragraph shall constitute a Class H felony.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a Class 2 misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1.

(c) When the Division finds that any person other than the registered owner of a vehicle has in his possession a certificate of title to the vehicle on which there appears an endorsement of an assignment of title but there does not appear in the assignment any designation to show the name and address of the assignee or transferee, the Division shall be authorized and empowered to seize and hold said certificate of title until the assignor whose name appears in the assignment appears before the Division to complete the execution of the assignment or until evidence satisfactory to the Division is presented to the Division to show the name and address of the transferee. (1937, c. 407, s. 36; 1947, c. 219, ss. 4, 5; 1955, c. 554, ss. 5, 6; 1961, c. 360, s. 8; c. 835, s. 8; 1963, c. 552, ss. 3, 4; 1971, c. 678; 1973, c. 1095, s. 2; 1975, c. 716, s. 5; 1993, c. 539, s. 338; 1994, Ex. Sess., c. 24, s. 14(c); 2000-182, s. 4.)

Cross References. — As to fees, see G.S. 20-85.

Legal Periodicals. — For note as to the requirements of this section through G.S. 20-78, see 32 N.C.L. Rev. 545 (1954).

For case law survey on time of acquisition of title to motor vehicles, see 41 N.C.L. Rev. 444 (1963).

For note on the conflict between the North Carolina Motor Vehicle Act and the UCC, see 65 N.C.L. Rev. 1156 (1987).

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Requirements Mandatory. — By explicit terms of this section and by interpretation of the Supreme Court, there are definite and mandatory requirements governing transfer of legal title and ownership to a motor vehicle. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

The requirements of this section are not within the discretion of automobile buyers and sellers; the requirements are mandatory. Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto., Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987).

Strict Compliance Required. — Strict compliance with the requirements of assignment and warranty of title and a statement of all liens and encumbrances is necessary in every sale of motor vehicles. Seymour v. W.S. Boyd Sales Co., 257 N.C. 603, 127 S.E.2d 265 (1962), decided under this section as it stood before the 1963 amendment.

The legislature did not intend to repeal

the Motor Vehicles Act by the general repealer of the Uniform Commercial Code. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

And the Uniform Commercial Code does not override the earlier motor vehicle statutes relating to the transfer of ownership of a motor vehicle for the purpose of tort law and liability insurance coverage. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

Subsection (b) Prevails over U.C.C. — Subsection (b) of this section contains specific, definite and comprehensive terms concerning the transfer of ownership of a motor vehicle, while the Uniform Commercial Code does not refer to transfer of ownership of motor vehicles, but only refers to the passing of title to property generally described as "goods." Although the word "automobile" comes within the general term of "goods," automobiles are a special class of goods which have long been heavily regulated by public regulatory acts. Subsection (b) is a special statute and the Uniform Commercial Code is a general statute. Thus, the special statute, even though earlier in point of time, must prevail. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

"Title" as Used in Subsection (b) Synonymous with "Ownership." — The words "title" and "ownership" are words that may be used interchangeably, and the legislature in enacting the 1963 amendment to subsection (b) of this section used the word "title" as a synonym for the word "ownership." Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

In enacting the 1963 amendment to subsection (b) of this section, providing that title to a motor vehicle cannot be transferred from one owner to another until the certificate of title has been duly executed and the vehicle delivered to the transferee, the legislature used the word "title" as a synonym for the word "ownership." Nationwide Mut. Ins. Co. v. Fireman's Fund Ins. Co., 279 N.C. 240, 182 S.E.2d 571 (1971).

No material conflict will arise between the Financial Responsibility Act of 1953 (§ 20-279.1 et seq.) and subsection (b) of this section, as amended by the legislature in 1963, by holding subsection (b) of this section to be controlling as to ownership of a motor vehicle for purposes of tort liability and insurance coverage. Rather, such an interpretation would strengthen and complement the purposes of the Financial Responsibility Act of 1953. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

Governs Where Ownership Transferred Between Two Parties. — While G.S. 20-57 is intended to govern a situation in which there is only one owner at issue, the party registering the vehicle, G.S. 20-72(b) is intended to govern a situation in which an ownership interest is being transferred between two parties. The first party being the original owner of the vehicle; the second party being the future owner of the vehicle. Batts v. Lumbermen's Mut. Cas. Ins. Co., — N.C. App. —, 665 S.E.2d 578, 2008 N.C. App. LEXIS 1613 (2008).

When Title to Motor Vehicle Passes Generally. — No title passes to the purchaser of a motor vehicle until the certificate of title has been assigned by the vendor and delivered to the vendee or his agent, and application has been made for a new certificate of title. International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 276 N.C. 243, 172 S.E.2d 55 (1970); Younts v. State Farm Mut. Auto. Ins. Co., 281 N.C. 582, 189 S.E.2d 137 (1972).

When a dealer transfers a vehicle registered under this Chapter, it must execute a reassignment and warranty of title on the reverse of the certificate of title, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle is delivered to the transferee. The dealer must also deliver the duly assigned certificate of title to the transferee or lienholder at the time the vehicle is delivered. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Transfer of Title as Warranty of Title. — Defendant, by admitting that it transferred title to plaintiff, admitted that it also warranted title to the automobiles sold. Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto., Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987).

Passage of Title for Purposes of Tort Law and Insurance Coverage. — After July 1, 1963, the effective date of the 1963 amendment to this section, for purposes of tort law and liability insurance coverage, no ownership passes to the purchaser of a motor vehicle which requires registration under the Motor Vehicle Act of 1937 until (1) the owner executes, in the presence of a person authorized to administer oaths, an assignment and warranty of title on the reverse of the certificate of title, including the name and address of the transferee, (2) there is an actual or constructive delivery of the motor vehicle, and (3) the duly assigned certificate of title is delivered to the transferee. In the event a security interest is obtained in the motor vehicle from the transferee, the requirement of delivery of the duly assigned certificate of title is met by delivering it to the lienholder. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970); Roseboro Ford, Inc. v. Bass, 77 N.C. App. 363, 335 S.E.2d 214 (1985); Jenkins v. Aetna Cas. & Sur. Co., 324 N.C. 394, 378 S.E.2d 773 (1989).

"[F]or purposes of tort law and liability insurance coverage, no ownership passes to the purchaser of a motor vehicle which requires registration" until transfer of legal title is effected as provided in this section. The general rule then, as between vendor and vendee, is that the vendee does not acquire "valid owner's liability insurance until legal title has been transferred or assigned" to the vendee by the vendor. Jenkins v. Aetna Cas. & Sur. Co., 91 N.C. App. 388, 371 S.E.2d 761 (1988), rev'd on other grounds, 324 N.C. 394, 378 S.E.2d 773 (1989).

Insureds' newly acquired vehicle was not covered on the date of an accident under the auto insurance policy issued to the insureds by the insurer because the insureds did not timely notify the insurer of the acquisition of the vehicle under the terms of their insurance policy and the issuance of a registration card by the North Carolina Department of Motor Vehicles, under G.S. 20-72(b), was not a necessary requirement for the ownership interest in the vehicle to vest in the insureds. Batts v. Lumbermen's Mut. Cas. Ins. Co., — N.C. App. —, 665 S.E.2d 578, 2008 N.C. App. LEXIS 1613 (2008).

Failure to Take Receipt of Title. — Where evidence established that buyer paid four hundred dollars ($400.00) cash as the total price for a car and took immediate possession of the vehicle, but never received the certificate of title, buyer was not the "owner" of the Camaro as that term is defined in G.S. 20-4.01(26); therefore, provision in policy excluding coverage for liability arising from the use of a vehicle "owned" by buyer did not apply. Jenkins v. Aetna Cas. & Sur. Co., 324 N.C. 394, 378 S.E.2d 773 (1989).

A vehicle dealer who sold a vehicle to a private consumer, who paid with a dishonored check, effectively placed the car into the stream of commerce to the extent that a second car dealer, who purchased the car from the buyer, could be construed as a good-faith purchaser of the car in spite of the fact that the first dealer never provided the consumer with a certificate of title. Sale Chevrolet, Buick, BMW, Inc. v. Peterbilt of Florence, Inc., 133 N.C. App. 177, 514 S.E.2d 747 (1999).

The 1961 amendments to subsection (b) and § 20-75 changed the law with respect to transfer of ownership of motor vehicles. International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 276 N.C. 243, 172 S.E.2d 55 (1970).

As to passage of title to motor vehicles prior to July 1, 1961, see International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 276 N.C. 243, 172 S.E.2d 55 (1970); Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

As to deferral of vesting of title under subsection (b) as amended in 1961 and before its amendment in 1963 until the purchaser had the old certificate endorsed to him and made application for a new certificate, see Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962). See also, Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963).

Duty of Purchaser to Secure Old Certificate of Title and Apply for New One. — This section and G.S. 20-75 make it the duty of the purchaser to secure from his vendor the old certificate of title duly endorsed or assigned and to apply for a new certificate. They do not relate to the duty of the Department (now Division) to issue a new certificate. Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).

There is no longer a requirement under the Motor Vehicle Act that a purchaser apply for a new certificate of title before title may pass or vest. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

For purposes of liability insurance coverage, ownership of a motor vehicle which requires registration under the Motor Vehicle Act of 1937 does not pass until transfer of legal title is effected as provided in subsection (b). Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741 (1985), cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

Controlling Effect of UCC over Security Interests and Priorities. — Notwithstanding the title transfer provisions of the Motor Vehicle Act, an automobile purchaser may be a "buyer in the ordinary course of business" as that term is used in G.S. 25-2-403 and 25-9-307, even though the certificate of title has not yet been reassigned. Moreover, it was the legislature's intent to have the UCC control issues of security interests and priorities. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

The UCC should control over the Motor Vehicle Act when automobiles are used as collateral and are held in inventory for sale. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Buyers who gave value for a used car displayed on a dealer's lot and received a 20-day temporary marker in June, 1983, which car was covered by a dealer inventory security agreement in effect since April 1, 1970, and on which the credit company retained the title certificate, which was in the name of the dealer, had a superior right to possession of the car when the credit company's agent came to repossess it on June 19, 1983, as it was no longer part of the dealer's inventory; and buyers were entitled to possession of the car in their action for wrongful conversion. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Warranty of Title and Statement of Liens and Encumbrances Required under Former Law. — Prior to the 1963 amendment to this section, subsection (b) made it the duty of the vendor of a registered vehicle to endorse his certificate of title to the transferee with a statement of all liens or encumbrances, to be verified by the oath of the owner. Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963).

The seller of a motor vehicle was required to endorse, and deliver to or for the buyer, an assignment and warranty of title and a statement of all liens and encumbrances, even where a conditional sale was involved. Seymour v. W.S. Boyd Sales Co., 257 N.C. 603, 127 S.E.2d 265 (1962), decided under this section as it stood before the 1963 amendment.

No Lien Created by Chattel Mortgage prior to Acquisition of Title. — Where the purchaser of a motor vehicle executed a chattel mortgage which was registered prior to the acknowledgment of assignment of the certificate of title by the seller and the forwarding of an application for a new certificate to the Department (now Division) of Motor Vehicles, the chattel mortgage did not create a lien on the vehicle, since the purchaser, at the time it was executed, did not have title, and the instrument could operate only as a contract to execute a chattel mortgage upon the acquisition of title. National Bank v. Greensboro Motor Co., 264 N.C. 568, 142 S.E.2d 166 (1965). As to perfecting security interest, see § 20-58 et seq.

When a sale is made to a dealer, it is not necessary to transmit the certificate of title to the Department (now Division) of Motor Vehicles until the dealer resells. Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963).

Vehicle Not a "Non-Owned Auto" as to Either Policy. — Trial court erred in holding that an owner's insurance policy terminated when the son's policy was issued on the same car because the automatic termination clause in the owner's policy's only applied if the owner obtained other insurance, and the owner's policy and the son's policy were procured by different persons; the vehicle was not a "non-owned auto" as to either policy because it was furnished for the regular use of the son, and because each policies' "share of the loss" was limited to the proportion that the limit of liability bore to the total of all applicable limits, and because both policies had the same limit, the policies were required to share pro rata in the damages to the vehicle. Progressive Am. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 184 N.C. App. 688, 647 S.E.2d 111, 2007 N.C. App. LEXIS 1625 (2007).

Applied in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953) (as to subsection (b)); Gaddy v. State Farm Mut. Auto. Ins. Co., 32 N.C. App. 714, 233 S.E.2d 613 (1977).

Cited in North Carolina Farm Bureau Mut. Ins. Co. v. Ayazi, 106 N.C. App. 475, 417 S.E.2d 81 (1992); Manning v. State Farm Mut. Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965); Younts v. State Farm Mut. Auto. Ins. Co., 13 N.C. App. 426, 185 S.E.2d 730 (1972); Moser v. Employers Com. Union Ins. Co. of Am., 25 N.C. App. 309, 212 S.E.2d 664 (1975); Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982); American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984); Hargett v. Reed, 95 N.C. App. 292, 382 S.E.2d 791 (1989); State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991); Hughes v. Young, 115 N.C. App. 325, 444 S.E.2d 248 (1994); Lynn v. West, 134 F.3d 582, 1998 U.S. App. LEXIS 403 (4th Cir.); Hernandez v. Nationwide Mut. Ins. Co., 171 N.C. App. 510, 615 S.E.2d 425, 2005 N.C. App. LEXIS 1360 (2005).

§ 20-73. New owner must get new certificate of title.

(a) Time Limit. — A person to whom a vehicle is transferred, whether by purchase or otherwise, must apply to the Division for a new certificate of title. An application for a certificate of title must be submitted within 28 days after the vehicle is transferred. A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.

A person may apply directly for a certificate of title or may allow another person, such as the person from whom the vehicle is transferred or a person who has a lien on the vehicle, to apply for a certificate of title on that person's behalf. A person to whom a vehicle is transferred is responsible for getting a certificate of title within the time limit regardless of whether the person allowed another to apply for a certificate of title on the person's behalf.

(b) Exceptions. — This section does not apply to any of the following:

(1) A dealer or an insurance company to whom a vehicle is transferred when the transfer meets the requirements of G.S. 20-75.

(2) A State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State

agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(c) Penalties. — A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of fifteen dollars ($15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of fifteen dollars ($15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund. (1937, c. 407, s. 37; 1939, c. 275; 1947, c. 219, s. 6; 1961, c. 360, s. 9; 1975, c. 716, s. 5; 1991, c. 689, s. 332; 1993, c. 539, s. 339; 1994, Ex. Sess., c. 24, s. 14(c); 2005-276, s. 44.1(j); 2009-81, s. 1; 2009-550, s. 2(b).)

Editor's Note. — Session Laws 2007-209, s. 3, provides: "Notwithstanding G.S. 20-58.2, any application for notation of security interest which had been completed but not yet submitted to or processed by the Division by the effective date of this act by reason of the fact that one or more owners failed to possess a North Carolina drivers license or North Carolina special identification card, as required by Section 4 of S.L. 2007-164, shall be deemed perfected as of the date of the execution of the security agreement provided that the application is delivered to the Division along with the required fee within 20 days of the effective date of this act." Session Laws 2007-164, s. 4, which amended G.S. 20-52(a)(1a)b by substituting "North Carolina drivers license number or North Carolina special identification card number" for "social security number," was repealed by Session Laws 2007-209, s. 1.

Session Laws 2007-209, s. 4, provides: "The time limit provisions set forth in G.S. 20-73(a) and the penalties provided in G.S. 20-73(c) shall not apply to any completed application which had not yet been submitted to or processed by the Division by the effective date of this act by reason of the fact that one or more owners failed to possess a North Carolina drivers license or North Carolina special identification card, as required by Section 4 of S.L. 2007-164, provided that the requirements of G.S. 20-73 are met within 28 days of the effective date of this act."

Session Laws 2007-209, s. 5, provides in part: "Sections 1, 3, and 4 of this act are effective when they become law and apply to applications for registration and certificate of title made on or after that date. Sections 1, 3, and 4 of this act shall also apply to any certificate of title, registration plate, registration card, or notation of security interest application which had been completed but not yet submitted to or processed by the Division by the effective date of this act."

Effect of Amendments. — Session Laws 2009-81, s. 1, effective June 11, 2009, in subsection (a), in the first paragraph, added the last sentence, and rewrote subsection (b).

Session Laws 2009-550, s. 2(b), effective August 28, 2009, in subdivision (b)(2), substituted "with purchasing, transferring, or titling" for "in purchasing or transferring" and inserted "another State agency."

CASE NOTES

Burden Is on Vendee to Apply for New Certificate of Title. — The burden is imposed on the vendee, or as this section describes him, the transferee, to present the certificate and make application for a new certificate of title within 20 days, and a willful failure to do so is expressly declared to be a misdemeanor. When the certificate of title is delivered to a lienholder, it is nonetheless the duty of the purchaser to see that the certificate is forwarded to the Department (now Division) of Motor Vehicles. Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963).

And Vendor Should Not Be Penalized for Vendee's Failure. — There is nothing in the 1961 amendments to this Part which suggests that dealer, a vendor, should be penalized and held liable because of the failure of a purchaser to perform his statutory duty. Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963).

There is nothing in the statute which suggests dealer, a vendor, should be penalized and held liable because of the failure of a purchaser to perform his statutory duty. International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 5 N.C.

App. 236, 168 S.E.2d 66 (1969), modified on other grounds and aff'd, 276 N.C. 243, 172 S.E.2d 55 (1970).

Application Must Be in Proper Form. — The statute necessarily implies that the application for a new certificate should be in proper form. Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).

Cited in International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 276 N.C. 243, 172 S.E.2d 55 (1970).

§ 20-74. Penalty for making false statement about transfer of vehicle.

A dealer or another person who, in an application required by this Division, knowingly makes a false statement about the date a vehicle was sold or acquired shall be guilty of a Class 3 misdemeanor. (1937, c. 407, s. 38; 1939, c. 275; 1961, c. 360, s. 10; 1975, c. 716, s. 5; 1979, c. 801, s. 8; 1981, c. 690, s. 21; 1991, c. 689, s. 333; 1993, c. 539, s. 340; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to duty of new owner to secure new certificate of title, see G.S. 20-73.

CASE NOTES

Compliance with Registration Statutes Mandatory. — It is manifest both from the express language of the registration statutes and from this companion penal enforcement provision that compliance with the registration statutes is mandatory and calls for substantial observance. Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953).

Cited in Community Credit Co. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962); International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 276 N.C. 243, 172 S.E.2d 55 (1970); Nationwide Mut. Ins. Co. v. Hayes, 7 N.C. App. 294, 172 S.E.2d 269 (1970); State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

§ 20-75. When transferee is dealer or insurance company.

When the transferee of a vehicle registered under this Article is:

(1) A dealer who is licensed under Article 12 of this Chapter and who holds the vehicle for resale; or

(2) An insurance company taking the vehicle for sale or disposal for salvage purposes where the title is taken as a part of a bona fide claim settlement transaction and only for the purpose of resale,

the transferee shall not be required to register the vehicle nor forward the certificate of title to the Division as provided in G.S. 20-73.

To assign or transfer title or interest in the vehicle, the dealer or insurance company shall execute, in the presence of a person authorized to administer oaths, a reassignment and warranty of title on the reverse of the certificate of title in the form approved by the Division, which shall include the name and address of the transferee. The title to the vehicle shall not pass or vest until the reassignment is executed and the motor vehicle delivered to the transferee.

The dealer transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except:

(1) Where a security interest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new certificate of title and necessary fees to the Division within 20 days; or

(2) Where the transferee has the option of cancelling the transfer of the vehicle within 10 days of delivery of the vehicle, the dealer shall

deliver the certificate of title to the transferee at the end of that period. Delivery need not be made if the contract for sale has been rescinded in writing by all parties to the contract.

Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a Class 2 misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1. (1937, c. 407, s. 39; 1961, c. 835, s. 9; 1963, c. 552, s. 5; 1967, c. 760; 1973, c. 1095, s. 3; 1975, c. 716, s. 5; 1993, c. 440, s. 12; c. 539, s. 341; 1994, Ex. Sess., c. 24, s. 14(c); 1997-327, s. 2.1.)

CASE NOTES

The 1961 amendments to this section and § 20-72(b) changed the law with respect to transfer of ownership of motor vehicles. International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co., 276 N.C. 243, 172 S.E.2d 55 (1970).

When a dealer transfers a vehicle registered under this chapter, it must execute a reassignment and warranty of title on the reverse of the certificate of title, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle delivered to the transferee. The dealer must also deliver the duly assigned certificate of title to the transferee or lienholder at the time the vehicle is delivered. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Application for New Certificate of Title. — There is no longer a requirement under the Motor Vehicle Act that a purchaser apply for a new certificate of title before title may pass or vest. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Controlling Effect of UCC over Security Interests and Priorities. — Notwithstanding the title transfer provisions of the Motor Vehicle Act, an automobile purchaser may be a "buyer in the ordinary course of business" as that term is used in G.S. 25-2-403 and 25-9-307, even though the certificate of title has not yet been reassigned. Moreover, it was the legislature's intent to have the UCC control issues of security interests and priorities. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

The UCC should control over the Motor Vehicle Act when automobiles are used as collateral and are held in inventory for sale. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Custom of used car dealers to accept a blank endorsement of the title by the owner and to transfer title directly to a purchaser upon an anonymous notarization was violative of the letter and spirit of the motor vehicle registration statutes and could not be asserted as a ground for equitable estoppel. Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953).

Buyers who gave value for a used car displayed on dealer's lot and received a 20-day temporary marker in June, 1983, which car was covered by a dealer inventory security agreement in effect since April 1, 1970, and on which the credit company retained the title certificate, which was in the name of the dealer, had superior right to possession of the car when the credit company's agent came to repossess it on June 19, 1983, as it was no longer part of the dealer's inventory; and buyers were entitled to possession of the car in their action for wrongful conversion. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Cited in Rushing v. Polk, 258 N.C. 256, 128 S.E.2d 675 (1962); Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

§ 20-75.1. Conditional delivery of motor vehicles.

Notwithstanding G.S. 20-52.1, 20-72, and 20-75, nothing contained in those sections prohibits a dealer from entering into a contract with any purchaser for the sale of a vehicle and delivering the vehicle to the purchaser under terms by which the dealer's obligation to execute the manufacturer's certificate of origin or the certificate of title is conditioned on the purchaser obtaining financing for the purchase of the vehicle. Liability, collision, and comprehensive insurance on a vehicle sold and delivered conditioned on the purchaser obtaining financing for the purchaser of the vehicle shall be covered by the dealer's insurance policy until such financing is finally approved and execution of the manufacturer's certificate of origin or execution of the certificate of title. Upon final approval and execution of the manufacturer's certificate of origin or the certificate of title, and upon the purchaser having liability insurance on another vehicle, the delivered vehicle shall be covered by the purchaser's insurance policy beginning at the time of final financial approval and execution of the manufacturer's certificate of origin or the certificate of title. The dealer shall notify the insurance agency servicing the purchaser's insurance policy or the purchaser's insurer of the purchase on the day of, or if the insurance agency or insurer is not open for business, on the next business day following approval of the purchaser's financing and execution of the manufacturer's certificate of origin or the certificate of title. This subsection is in addition to any other provisions of law or insurance policies and does not repeal or supersede those provisions. (1993, c. 328, s. 1.)

§ 20-76. Title lost or unlawfully detained; bond as condition to issuance of new certificate.

(a) Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the Division is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the Division is satisfied that the applicant is entitled thereto and that G.S. 20-72 has been complied with, it is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fees.

(b) Whenever the applicant for a new certificate of title is unable to satisfy the Division that he is entitled thereto as provided in subsection (a) of this section, the applicant may nevertheless obtain issuance of a new certificate of title by filing a bond with the Division as a condition to the issuance thereof. The bond shall be in the form prescribed by the Division and shall be executed by the applicant. It shall be accompanied by the deposit of cash with the Division, be executed as surety by a person, firm or corporation authorized to conduct a surety business in this State or be in the nature of a real estate bond as described in G.S. 20-279.24(a). The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the Division and conditioned to indemnify any prior owner or lienholder, any subsequent purchaser of the vehicle or person acquiring any security interest therein, and their respective successors in interest, against any expense, loss or damage, reason of the issuance of the certificate of title to the vehicle or on account of any defect in or undisclosed security interest in the right, title and interest of the applicant in and to the vehicle. Any person damaged by issuance of the certificate of title shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this State and the currently valid certificate of title is surrendered to the Division, unless the Division has been notified of the pendency of an action to recover on the bond. (1937, c. 407, s. 40; 1947, c. 219, s. 7; 1961, c. 360, s. 11; c. 835, s. 10; 1975, c. 716, s. 5.)

Cross References. — For fee schedule, see G.S. 20-85.

§ 20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.

(a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases.

(b) In the event of transfer as upon inheritance, devise or bequest, the Division shall, upon a receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. If a decedent dies intestate and no administrator has qualified or the clerk of superior court has not issued a certificate of assignment as part of the widow's year's allowance, or if a decedent dies testate with a small estate and leaving a purported will, which, in the opinion of the clerk of superior court, does not justify the expense of probate and administration and probate and administration is not demanded by any interested party entitled by law to demand same, and provided that the purported will is filed in the public records of the office of the clerk of the superior court, the Division may upon affidavit executed by all heirs effect such transfer. The affidavit shall state the name of the decedent, date of death, that the decedent died intestate or testate and no administration is pending or expected, that all debts have been paid or that the proceeds from the transfer will be used for that purpose, the names, ages and relationship of all heirs and devisees (if there be a purported will), and the name and address of the transferee of the title. A surviving spouse may execute the affidavit and transfer the interest of the decedent's minor or incompetent children where such minor or incompetent does not have a guardian. A transfer under this subsection shall not affect the validity nor be in prejudice of any creditor's lien.

(c) Mechanic's or Storage Lien. — In any case where a vehicle is sold under a mechanic's or storage lien, or abandoned property, the Division shall be given a 20-day notice as provided in G.S. 20-114.

(d) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public in which a vehicle remains unclaimed for 10 days, or the landowners upon whose property a motor vehicle has been abandoned for more than 30 days, shall, within five days after the expiration of that period, report the vehicle as unclaimed to the Division. Failure to make such report shall constitute a Class 3 misdemeanor. Persons who are required to make this report and who fail to do so within the time period specified may collect other charges due but may not collect storage charges for the period of time between when they were required to make this report and when they actually did send the report to the Division by certified mail.

Any vehicle which remains unclaimed after report is made to the Division may be sold by such operator or landowner in accordance with the provisions relating to the enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A.

(e) Any person, who shall sell a vehicle to satisfy a mechanic's or storage lien or any person who shall sell a vehicle as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise by operation of law, shall remove any license plates attached thereto and return them to the Division. (1937, c. 407, s. 41; 1943, c. 726; 1945, cc. 289, 714; 1955, c. 296, s. 1; 1959, c. 1264, s. 3; 1961, c. 360, ss. 12, 13; 1967, c. 562, s. 8; 1971, cc. 230, 512, 876; 1973, c. 1386, ss. 1, 2; c. 1446, s. 21; 1975, c. 438, s. 2; c. 716, s. 5; 1993, c. 539, s. 342; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 635, s. 1; 2003-336, s. 1.)

Cross References. — For fee schedule, see G.S. 20-85.

Legal Periodicals. — For article concerning liens on personal property not governed by the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

CASE NOTES

Cited in Younts v. State Farm Mut. Auto. Ins. Co., 281 N.C. 582, 189 S.E.2d 137 (1972).

§ 20-78. When Division to transfer registration and issue new certificate; recordation.

(a) The Division, upon receipt of a properly endorsed certificate of title, application for transfer thereof and payment of all proper fees, shall issue a new certificate of title as upon an original registration. The Division, upon receipt of an application for transfer of registration plates, together with payment of all proper fees, shall issue a new registration card transferring and assigning the registration plates and numbers thereon as upon an original assignment of registration plates.

(b) The Division shall maintain a record of certificates of title issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted. (1937, c. 407, s. 42; 1943, c. 726; 1947, c. 219, s. 8; 1961, c. 360, s. 14; 1971, c. 1070, s. 4; 1975, c. 716, s. 5; 1999-452, s. 15.)

Cross References. — For fee schedule, see G.S. 20-85.

CASE NOTES

Applied in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953).

Cited in Morrisey v. Crabtree, 143 F. Supp. 105 (M.D.N.C. 1956); Sutton v. Sutton, 35 N.C. App. 670, 242 S.E.2d 644 (1978).

Part 5. Issuance of Special Plates.

§ 20-79. Dealer license plates.

(a) How to Get a Dealer Plate. — The Division may issue a person licensed under Article 12 of this Chapter the appropriate classification of dealer license plate. A person eligible for a dealer license plate may obtain one by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division. The required fee is the amount set by G.S. 20-87(7).

(b) Number of Plates. — A dealer who was licensed under Article 12 of this Chapter for the previous 12-month period ending December 31 may obtain the number of dealer license plates allowed by the following table; the number allowed is based on the number of motor vehicles the dealer sold during the relevant 12-month period and the average number of qualifying sales representatives the dealer employed during that same 12-month period:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	1
At least 12 but less than 25	4
At least 25 but less than 37	5
At least 37 but less than 49	6
49 or more	At least 6, but no more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

A dealer who was not licensed under Article 12 of this Chapter for part or all of the previous 12-month period ending December 31 may obtain the number of dealer license plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application. A "qualifying sales representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

A dealer who sold fewer than 49 motor vehicles the previous 12-month period ending December 31 but has sold at least that number since January 1 may apply for additional dealer license plates at any time. The maximum number of dealer license plates the dealer may obtain is the number the dealer could have obtained if the dealer had sold at least 49 motor vehicles in the previous 12-month period ending December 31.

A dealer who applies for a dealer license plate must certify to the Division the number of motor vehicles the dealer sold in the relevant period. Making a material misstatement in an application for a dealer license plate is grounds for the denial, suspension, or revocation of a dealer's license under G.S. 20-294.

A dealer engaged in the alteration and sale of specialty vehicles may apply for up to two dealer plates in addition to the number of dealer plates that the dealer would otherwise be entitled to under this section.

This subsection does not apply to manufacturers licensed under Article 12 of this Chapter.

(c) Form and Duration. — A dealer license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. A dealer license plate must have a distinguishing symbol identifying the plate as a dealer license plate. The symbol may vary depending upon the classification of dealer license plate issued. The Division must provide suitably reduced sized license plates for motorcycle dealers and manufacturers.

A dealer license plate is issued for a period of one year. The Division shall vary the expiration dates of dealer registration renewals so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. A dealer license plate may be transferred from one vehicle to another. When the Division issues a dealer plate, it may issue a registration that expires at the end of any monthly interval. When one of the following occurs, a dealer must surrender to the Division all dealer license plates issued to the dealer:

(1) The dealer surrenders the license issued to the dealer under Article 12 of this Chapter.

(2) The Division suspends or revokes the license issued to the dealer under Article 12 of this Chapter.
(3) The Division rescinds the dealer license plates because of a violation of the restrictions on the use of a dealer license plate.

To obtain a dealer license plate after it has been surrendered, the dealer must file a new application for a dealer license plate and pay the required fee for the plate.

(d) Restrictions on Use. — A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.
(2) Is not consigned to the dealer.
(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
(4) Is not used by the dealer in another business in which the dealer is engaged.
(5) Is driven on a highway by a person who meets one of the following descriptions:
    a. Has a demonstration permit to test-drive the motor vehicle and carries the demonstration permit while driving the motor vehicle.
    b. Is an officer or sales representative of the dealer and is driving the vehicle for a business purpose of the dealer.
    c. Is an employee of the dealer and is driving the vehicle in the course of employment.
(6) A copy of the registration card for the dealer plate issued to the dealer is carried by the person operating the motor vehicle or, if the person is operating the motor vehicle in this State, the registration card is maintained on file at the dealer's address listed on the registration card, and the registration card must be able to be produced within 24 hours upon request of any law enforcement officer.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

(e) Sanctions. — The following sanctions apply when a motor vehicle displaying a dealer license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).
(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).
(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(f) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used.

(g) Penalties. — The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(h) Definition. — For purposes of this section, the term "dealer" means a person who is licensed under Article 12 of this Chapter. (1937, c. 407, s. 43; 1947, c. 220, s. 2; 1949, c. 583, s. 3; 1951, c. 985, s. 2; 1959, c. 1264, s. 3.5; 1961, c. 360, s. 15; 1975, c. 716, s. 5; 1979, c. 239; c. 612, s. 1; 1985, c. 764, s. 21; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1989, c. 770, s. 74.1(a); 1993, c. 321, s. 169.4; c. 440, s. 2; c. 539, s. 343; 1993 (Reg. Sess., 1994), c. 697, ss. 1, 2; c. 761, s. 6; 1994, Ex. Sess., c. 24, s. 14(c); 1997-335, s. 1; 2001-212, s. 1; 2004-167, s. 4; 2004-199, s. 59; 2005-276, s. 6.37(q); 2007-291, s. 1; 2007-481, s. 1.)

Editor's Note. — Session Laws 2005-276, s. 6.37(w), provides: "The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2009-456, s. 2, provides: "The Joint Legislative Transportation Oversight Committee, in consultation with the Revenue Laws Study Committee, must study the authorization of special registration plates under Part 5 of Article 3 of Chapter 20 of the General Statutes and the issuance of special registration plates with a design that is not a 'First in Flight' design. As part of its study, the Division of Motor Vehicles must report to the Committee `the special registration plates that have been authorized but for which the Division has not received the minimum 300 applications. It is the intent of the General Assembly to repeal the authorization for a special plate that has not received at least 300 applications within two years of its authorization."

CASE NOTES

Violation by Corporation. — For corporate dealer like Toyota to violate this section, some agent or employee must cause or permit attachment of tags. Defendant, as an individual and an agent of Toyota and with knowledge and permission of corporation, attached tags to his personal automobile. Johnson v. Skinner, 99 N.C. App. 1, 392 S.E.2d 634, cert. denied, 327 N.C. 429, 395 S.E.2d 680 (1990).

Violation of Statute Is Negligence Per Se. — This section is a safety statute, and violation of statute would constitute "negligence within itself." Johnson v. Skinner, 99 N.C. App. 1, 392 S.E.2d 634, cert. denied, 327 N.C. 429, 395 S.E.2d 680 (1990).

Violation of This Statute May Be Proximate Cause of Accident. — Illegal use of dealer's plate could be proximate cause of a subsequent injury, even where there is a subsequent intervening cause. Johnson v. Skinner, 99 N.C. App. 1, 392 S.E.2d 634, cert. denied, 327 N.C. 429, 395 S.E.2d 680 (1990).

To hold that a knowing and flagrant violation of dealer tag statute can never constitute proximate cause of a highway accident would eviscerate safety component of this section. Johnson v. Skinner, 99 N.C. App. 1, 392 S.E.2d 634, cert. denied, 327 N.C. 429, 395 S.E.2d 680 (1990).

Applied in Brinkley v. Nationwide Mut. Ins. Co., 271 N.C. 301, 156 S.E.2d 225 (1967); Kraemer v. Moore, 67 N.C. App. 505, 313 S.E.2d 610 (1984); In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Cited in Hawkins v. M & J Fin. Corp., 238 N.C. 174, 77 S.E.2d 669 (1953); Smart Fin. Co. v. Dick, 256 N.C. 669, 124 S.E.2d 862 (1962); McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487.

§ 20-79.01. Special sports event temporary license plates.

(a) Application. — A dealer who is licensed under Article 12 of this Chapter and who agrees to loan to another for use at a special sports event a vehicle that could display a dealer license plate if driven by an officer or employee of the dealer may obtain a temporary special sports event license plate for that vehicle by filing an application with the Division and paying the required fee. A "special sports event" is a sports event that is held no more than once a year and is open to the public. An application must be filed on a form provided by the Division and contain the information required by the Division. The fee for a temporary special sports event license plate is five dollars ($5.00).

(b) Form and Duration. — A temporary special sports event license plate must state on the plate the date it was issued, the date it expires, and the make, model, and serial number of the vehicle for which it is issued. A temporary special sports event license plate may be issued for no more than 45 days. The dealer to whom the plate is issued must destroy the plate on or before the date it expires.

(c) Restrictions on Use. — A temporary special sports event license plate may be displayed only on the vehicle for which it is issued. A vehicle displaying a temporary special sports event license plate may be driven by anyone who is licensed to drive the type of vehicle for which the plate is issued and may be driven for any purpose. (1993, c. 440, s. 13.)

§ 20-79.1. (For expiration date, see note) Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

(a) The Division may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Division to a dealer duly registered under the provisions of this Article who applies for at least 25 such plates or markers and who encloses with such application a fee of one dollar ($1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Division. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Division may require. Each record shall be kept for a period of at least one year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representatives of the Division and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.

(d) A dealer shall:

(1) Not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle which he has sold.

(2) Not issue a temporary registration plate or marker without first obtaining from the purchaser or owner a written application for titling and registration of the vehicle and the applicable fees.

(3) Within 10 working days, mail or deliver the application and fees to the Division or deliver the application and fees to a local license agency for

processing. Delivery need not be made if the contract for sale has been rescinded in writing by all parties to the contract.

(4) Not deliver a temporary registration plate to anyone purchasing a vehicle that has an unexpired registration plate that is to be transferred to the purchaser.

(5) Not lend to anyone, or use on any vehicle that he may own, any temporary registration plates or markers.

A dealer may issue temporary markers, without obtaining the written application for titling and registration or collecting the applicable fees, to nonresidents for the purpose of removing the vehicle from the State.

(e) Every dealer who issues temporary plates or markers shall write clearly and indelibly on the face of the temporary registration plate or marker:

(1) The dates of issuance and expiration;

(2) The make, motor number, and serial numbers of the vehicle; and

(3) Any other information that the Division may require.

It shall be unlawful for any person to issue a temporary registration plate or marker containing any misstatement of fact or to knowingly write any false information on the face of the plate or marker.

(f) If the Division finds that the provisions of this section or the directions of the Division are not being complied with by the dealer, he may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Division: Provided, that if the annual registration plates are not received within 30 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 30-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund. Upon the expiration of the 30 days from the date of issuance, a second 30-day temporary registration plate or marker may be issued by the dealer upon showing the vehicle has been sold, a temporary lien has been filed as provided in G.S. 20-58, and that the dealer, having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title so that the lien may be perfected.

(i) A temporary registration plate or marker may be used on the vehicle for which issued only and may not be transferred, loaned, or assigned to another. In the event a temporary registration plate or marker or temporary registration certificate is lost or stolen, the owner shall permanently destroy the remaining plate or marker or certificate and no operation of the vehicle for which the lost or stolen registration certificate, registration plate or marker has been issued shall be made on the highways until the regular license plate is received and attached thereto.

G.S. 20-79.1 is set out twice. See notes.

(j) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations, not inconsistent herewith, as he shall deem necessary for the purpose of carrying out the provisions of this section.

(k) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary registration plates or markers as is applicable to nontemporary plates. (1957, c. 246, s. 1; 1963, c. 552, s. 8; 1975, c. 716, s. 5; 1985, c. 95; c. 263; 1997-327, ss. 1, 2; 2000-182, s. 5.)

Section Set Out Twice. — The section above is effective until July 1, 2011. For the section as amended effective July 1, 2011, and applicable to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first, see the following section, also numbered G.S. 20-79.1. See Editor's note.

Editor's Note. — Session Laws 2007-471, s. 8, as amended by Session Laws 2009-445, s. 25(a), provides: "Unless otherwise stated, this act becomes effective July 1, 2011, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first."

CASE NOTES

Reasonable Suspicion Temporary Tag Was Improper. — Officer possessed reasonable suspicion to believe that defendant was operating defendant's vehicle without a proper registration tag because the tag displayed was just a piece of paper with a date written on it, rather than the piece of cardboard that car dealers normally hand out, which contains the dates of issuance and expiration, the make, the motor number, and the serial numbers of the vehicle. State v. Smith, — N.C. App. —, 666 S.E.2d 191, 2008 N.C. App. LEXIS 1661 (2008).

Applied in State v. Gray, 55 N.C. App. 568, 286 S.E.2d 357 (1982).

Cited in Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963); State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991).

§ 20-79.1. (For effective date, see note) Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

(a) The Division may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Division to a dealer duly registered under the provisions of this Article who applies for at least 25 such plates or markers and who encloses with such application a fee of one dollar ($1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Division. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Division may require. Each record shall be kept for a period of at least one year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representatives of the Division and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.

(d) A dealer shall:

(1) Not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle which he has sold.

(2) Not issue a temporary registration plate or marker without first obtaining from the purchaser or owner a written application for titling and registration of the vehicle and the applicable fees.

(3) Within 10 working days, mail or deliver the application and fees to the Division or deliver the application and fees to a local license agency for processing. Delivery need not be made if the contract for sale has been rescinded in writing by all parties to the contract.

(4) Not deliver a temporary registration plate to anyone purchasing a vehicle that has an unexpired registration plate that is to be transferred to the purchaser.

(5) Not lend to anyone, or use on any vehicle that he may own, any temporary registration plates or markers.

A dealer may issue temporary markers, without obtaining the written application for titling and registration or collecting the applicable fees, to nonresidents for the purpose of removing the vehicle from the State.

(e) Every dealer who issues temporary plates or markers shall write clearly and indelibly on the face of the temporary registration plate or marker:

(1) The dates of issuance and expiration;

(2) The make, motor number, and serial numbers of the vehicle; and

(3) Any other information that the Division may require.

It shall be unlawful for any person to issue a temporary registration plate or marker containing any misstatement of fact or to knowingly write any false information on the face of the plate or marker.

(f) If the Division finds that the provisions of this section or the directions of the Division are not being complied with by the dealer, the Division may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers. Nothing in this section shall be deemed to require a dealer to collect or receive property taxes from any person.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the limited registration plates or the annual registration plates from the Division: Provided, that if the limited registration plates or the annual registration plates are not received within 30 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 30-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the limited registration plates or the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or

G.S. 20-79.1 is set out twice. See notes.

markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund. Upon the expiration of the 30 days from the date of issuance, a second 30-day temporary registration plate or marker may be issued by the dealer upon showing the vehicle has been sold, a temporary lien has been filed as provided in G.S. 20-58, and that the dealer, having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title so that the lien may be perfected.

(i) A temporary registration plate or marker may be used on the vehicle for which issued only and may not be transferred, loaned, or assigned to another. In the event a temporary registration plate or marker or temporary registration certificate is lost or stolen, the owner shall permanently destroy the remaining plate or marker or certificate and no operation of the vehicle for which the lost or stolen registration certificate, registration plate or marker has been issued shall be made on the highways until the regular license plate is received and attached thereto.

(j) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations, not inconsistent herewith, as he shall deem necessary for the purpose of carrying out the provisions of this section.

(k) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary registration plates or markers as is applicable to nontemporary plates. (1957, c. 246, s. 1; 1963, c. 552, s. 8; 1975, c. 716, s. 5; 1985, c. 95; c. 263; 1997-327, ss. 1, 2; 2000-182, s. 5; 2007-471, s. 1; 2009-445, s. 25(a))

Section Set Out Twice. — The section above is effective July 1, 2011, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. For the section as in effect until July 1, 2011, see the preceding section, also numbered G.S. 20-79.1. See Editor's Note.

Editor's Note. — Session Laws 2007-471, s. 8, as amended by Session Laws 2009-445, s. 25(a), provides: "Unless otherwise stated, this act becomes effective July 1, 2011, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first."

Effect of Amendments. — Session Laws 2007-471, s. 1, in subsection (f), substituted "the Division may" for "he may" and added the second sentence; inserted "limited registration plates or the" twice in subsection (g) and once in subsection (h). See Editor's Note for contingent effective date.

§ 20-79.1A. (For effective date, see note) Limited registration plates.

A limited registration plate is issuable to a person who applies, either directly or through a dealer licensed under Article 12 of this Chapter, for a title to a motor vehicle and a registration plate for the vehicle and who submits payment for the applicable title and registration fees but does not submit payment for any municipal corporation property taxes on the vehicle. A person who submits payment for municipal corporation property taxes receives an annual registration plate.

A limited registration plate must be clearly and visibly designated as "temporary." The plate expires on the last day of the second month following the date of application of the limited registration plate. The plate may be used only on the vehicle for which it is issued and may not be transferred, loaned, or assigned to another. If the plate is lost or stolen, the vehicle for which the plate was issued may not be operated on a highway until a replacement limited registration plate or a regular license plate is received and attached to the vehicle.

The Division is not required to issue a registration certificate for a limited registration plate. A combined tax and registration notice issued under G.S. 105-330.5 serves as the registration certificate for the plate. (2007-471, s. 2; 2009-445, ss. 24(b), 25(a).)

Editor's Note. — Session Laws 2007-471, s. 8, as amended by Session Laws 2009-445, s. 25(a), makes this section effective July 1, 2011, and applicable to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first.

Session Laws 2009-445, s. 24(c), provides: "G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of this section, are effective when this act becomes law. Subsection (b) of this section and the remainder of subsection (a) of this section become effective July 1, 2011, and apply to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system or registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this section is effective when it becomes law."

Effect of Amendments. — Session Laws 2009-445, s. 24(b), effective July 1, 2011, rewrote this section. See Editor's Note for applicability and contingent effective date provisions.

§ 20-79.2. Transporter plates.

(a) Who Can Get a Plate. — A person engaged in a business requiring the limited operation of a motor vehicle for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser.

(2) To repossess a motor vehicle.

(3) To pick up a motor vehicle that is to be repaired or otherwise prepared for sale by a dealer, to road-test the vehicle, if it is repaired, within a 10-mile radius of the place where it is repaired, and to deliver the vehicle to the dealer.

(4) To move a motor vehicle that is owned by the business and is a replaced vehicle offered for sale.

(5) To take a motor vehicle either to or from a motor vehicle auction where the vehicle will be or was offered for sale.

(6) To road-test a repaired truck whose GVWR is at least 15,000 pounds when the test is performed within a 10-mile radius of the place where the truck was repaired and the truck is owned by a person who has a fleet of at least five trucks whose GVWRs are at least 15,000 pounds and who maintains the place where the truck was repaired.

(7) To move a mobile office, a mobile classroom, or a mobile or manufactured home.

(8) To drive a motor vehicle that is at least 25 years old to and from a parade or another public event and to drive the motor vehicle in that event. A person who owns a motor vehicle that is at least 25 years old is considered to be in the business of collecting those vehicles.

(9) To drive a motor vehicle that is part of the inventory of a dealer to and from a motor vehicle trade show or exhibition or to, during, and from a parade in which the motor vehicle is used.

(10) To drive special mobile equipment in any of the following circumstances:

  a. From the manufacturer of the equipment to a facility of a dealer.

b. From one facility of a dealer to another facility of a dealer.
c. From a dealer to the person who buys the equipment from the dealer.

(b) How to Get a Plate. — A person may obtain a transporter plate by filing an application with the Division and paying the required fee. An application must be on a form provided by the Division and contain the information required by the Division. The fee for a transporter plate is one-half the fee set in G.S. 20-87(5) for a passenger motor vehicle of not more than 15 passengers.

(b1) Number of Plates. — The total number of transporter and dealer plates issued to a dealer may not exceed the number of dealer plates that can be issued to the dealer under G.S. 20-79(b). This restriction does not apply to a person who is not a dealer. Transporter plates issued to a dealer shall bear the words "Dealer-Transporter."

(b2) Sanctions. — The following sanctions apply when a motor vehicle displaying a "Dealer-Transporter" license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).
(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).
(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(c) Form, Duration, and Transfer. — A transporter plate is a type of commercial license plate. A transporter plate issued to a dealer is issued on a fiscal-year basis. A transporter plate issued to a person who is not a dealer is issued on a calendar-year basis. During the year for which it is issued, a person may transfer a transporter plate from one vehicle to another as long as the vehicle is driven only for a purpose authorized by subsection (a) of this section. The Division may rescind a transporter plate that is displayed on a motor vehicle driven for a purpose that is not authorized by subsection (a) of this section.

(d) A county may obtain one transporter plate, without paying a fee, by filing an application with the Division on a form to be provided by the Division. A transporter plate issued pursuant to this subsection may only be used to transport motor vehicles as part of a program established by the county to receive donated motor vehicles and make them available to low-income individuals.

If a motor vehicle is operated on the highways of this State using a transporter plate authorized by this section, all of the following requirements shall be met:

(1) The driver of the vehicle shall have in his or her possession the certificate of title for the motor vehicle, which has been properly reassigned by the previous owner to the county or the affected donor program.
(2) The vehicle shall be covered by liability insurance that meets the requirements of Article 9A of this Chapter.

The form and duration of the transporter plate shall be as provided in subsection (c) of this section. (1961, c. 360, s. 21; 1969, c. 600, s. 1; 1975, c. 222; 1979, c. 473, ss. 1, 2; c. 627, ss. 1-3; 1981, c. 727, ss. 1, 2; 1983, c. 426; 1987, c. 520; 1993, c. 440, s. 4; 1995, c. 50, s. 1; 1997-335, s. 2; 2001-147, s. 1.)

§ **20-79.3:** Repealed by Session Laws 1993, c. 440, s. 5.

§ 20-79.4. Special registration plates.

(a) General. — Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days. A special registration plate may not be issued for a vehicle registered under the International Registration Plan. A special registration plate may be issued for a commercial vehicle that is not registered under the International Registration Plan. A special registration plate may not be developed using a name or logo for which a trademark has been issued unless the holder of the trademark licenses, without charge, the State to use the name or logo on the special registration plate.

(a1) Qualifying for a Special Plate. — In order to qualify for a special plate, an applicant shall meet all of the qualifications set out in this section. The Division of Motor Vehicles shall verify the qualifications of an individual to whom any special plate is issued to ensure only qualified applicants receive the requested special plates.

(a2) Special Plates Based Upon Military Service. — The Division of Veterans Affairs shall be responsible for verifying and maintaining all verification documentation for all special plates that are based upon military service. The Division shall not issue a special plate that is based on military service unless the application is accompanied by a motor vehicle registration (MVR) verification form signed by the Director of the Division of Veterans Affairs, or the Director's designee, showing that the Division of Veterans Affairs has verified the applicant's credentials and qualifications to hold the special plate applied for.

(1) Unless a qualifying condition exists requiring annual verification, no additional verification shall be required to renew a special registration plate either in person or through an online service.
(2) If the Division of Veterans Affairs determines a special registration plate has been issued due to an error on the part of the Division of Motor Vehicles, the plate shall be recalled and canceled.
(3) If the Division of Veterans Affairs determines a special registration plate has been issued to an applicant who falsified documents or has fraudulently applied for the special registration plate, the Division of Motor Vehicles shall revoke the special plate and take appropriate enforcement action.

(b) Types. — The Division shall issue the following types of special registration plates:

(1) 82nd Airborne Division Association Member. — Issuable to a member of the 82nd Airborne Division Association, Inc. The plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.
(2) Administrative Officer of the Courts. — Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".
(3) AIDS Awareness. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Find a Cure" beside the logo of a red ribbon on the left side of the plate.
(4) Air Medal Recipient. — Issuable to the recipient of the Air Medal. The plate shall bear the emblem of the Air Medal and the words "Air Medal".

(5) Alpha Kappa Alpha Sorority. — Issuable to the registered owner of a motor vehicle. The plate shall bear the sorority's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(6) Alpha Phi Alpha Fraternity. — Issuable to a member or supporter of the Alpha Phi Alpha Fraternity in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name.

(7) ALS Research. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Nothing Less, Cure ALS" and the logo of the nonprofit group the ALS Association, Jim "Catfish" Hunter Chapter.

(8) Alternative Fuel Vehicles. — Issuable to the registered owner of an alternative fuel vehicle. The plate shall bear the words "Alternative Fuel Vehicle". The Division must receive 300 or more applications for the plate before it may be developed.

(9) Amateur Radio Operator. — Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(10) American Legion. — Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the emblem of the American Legion. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(11) Animal Lovers. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a picture of a dog and cat and the phrase "I Care."

(12) ARC of North Carolina. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of The ARC of North Carolina, Inc., and the phrase "The ARC".

(13) Audubon North Carolina. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the National Audubon Society, Inc., logo and a representation of a bird native to North Carolina.

(14) Autism Society of North Carolina. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Autism Society of North Carolina", the phrase "Providing Support, Promoting Opportunities", and the logo of the Autism Society.

(15) Aviation Maintenance Technician. — Issuable to a person who is a Federal Aviation Authority certified Aviation Maintenance Technician. The plate shall bear the logo of the F.A.A. Airworthiness Program and the initials "A.M.T." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(16) Back Country Horsemen of North Carolina. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a horseman trail riding and bear the phrase "Back Country Horsemen of NC."

(17) Be Active NC. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Be Active NC" and a representation of the "Be Active NC" logo.

(18) Brain Injury Awareness. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Brain Injury Awareness" and the logo of the nonprofit group Brain Injury Association of North Carolina, Inc.

(19) Breast Cancer Awareness. — Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Early Detection Saves Lives" and a representation of a pink ribbon. The Division must receive 300 or more applications for the plate before it may be developed.

(20) Breast Cancer Earlier Detection. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Friends for An Earlier Breast Cancer Test."

(21) Bronze Star Combat Recipient. — Issuable to a recipient of the Bronze Star Medal for valor in combat. The plate shall bear the emblem of the Bronze Star with a "Combat V" emblem and the words "Bronze Star." To be eligible for this plate, the applicant must provide documentation that the medal was issued for valor in combat.

(22) Bronze Star Recipient. — Issuable to a recipient of the Bronze Star. The plate shall bear the emblem of the Bronze Star and the words "Bronze Star".

(23) Buddy Pelletier Surfing Foundation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Buddy Pelletier Surfing Foundation" and bear the logo of the Foundation.

(24) Buffalo Soldiers. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "The Buffalo Soldiers" and the logo of the 9th & 10th (Horse) Cavalry Association of the Buffalo Soldiers Greater North Carolina Chapter (BSGNCC).

(25) Carolina's Aviation Museum. — This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Carolina's Aviation Museum" and a logo provided by the museum.

(26) Celebrate Adoption. — Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Celebrate Adoption" and a representation of a white ribbon with a red heart on it. The Division must receive 300 or more applications for the plate before it may be developed.

(27) Civic Club. — Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(28) Civil Air Patrol Member. — Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(29) Class D Citizen's Radio Station Operator. — Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class

D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(30) Clerk of Superior Court. — Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(31) Coast Guard Auxiliary Member. — Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(32) Coastal Conservation Association. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo and name of the Coastal Conservation Association.

(33) Cold War Veteran. — Issuable to a veteran of the armed services of the United States who served during the Cold War era, September 2, 1945, through December 26, 1991, and who was separated from the armed services under honorable conditions. The plate shall bear the words "Cold War Veteran" and an insignia representing the Cold War era. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(34) Collegiate Insignia Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(35) Combat Infantry Badge Recipient. — Issuable to a recipient of the Combat Infantry Badge. The plate shall bear the phrase "Combat Infantry Badge " and a representation of the Combat Infantry Badge. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(36) Combat Veteran. — Issuable to a veteran of the Armed Forces who served in a combat zone, or in waters adjacent to a combat zone, during a period of war and who was separated from the Armed Forces under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(37) Commercial Fishing. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of commercial fishing in North Carolina. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(38) Corvette Club. — Issuable to the registered owner of a motor vehicle. The plate shall bear the flags logo of the Chevrolet Corvette. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(39) County Commissioner. — Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(40) Crystal Coast. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Crystal Coast Artificial Reef Association" and a representation of a SCUBA diving flag.

(41) Daughters of the American Revolution. — Issuable to the registered owner of a motor vehicle. The plate may bear a phrase and picture appropriate to the organization. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(42) Delta Sigma Theta Sorority. — Issuable to the registered owner of a motor vehicle. The plate shall bear the sorority's name and symbol. The Division must receive 300 or more applications for the plate before it may be developed.

(43) Disabled Veteran. — Issuable to a veteran of the Armed Forces of the United States who suffered a 100% service-connected disability.

(44) Distinguished Flying Cross. — Issuable to a recipient of the Distinguished Flying Cross. The plate shall bear the emblem of the Distinguished Flying Cross and the words "Distinguished Flying Cross".

(45) District Attorney. — Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(46) Ducks Unlimited. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of Ducks Unlimited, Inc., and shall bear the words: "Ducks Unlimited".

(47) E-911 Telecommunicator. — Issuable to an active E-911 Telecommunicator. An active E-911 Telecommunicator is an individual employed by a public safety agency whose primary responsibility is to receive, process, transmit, or dispatch emergency and nonemergency calls for police, fire, emergency medical, and other public safety services via telephone and other communication devices. The plate shall bear the phrase "E-911 Telecommunicator." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(48) Eagle Scout. — Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or

guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle Scout". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(49) El Pueblo. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-18.12. The plate shall bear the El Pueblo logo and the words "El Pueblo". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(50) Emergency Medical Technician. — Issuable to an emergency medical technician, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the letters "EMT". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(51) Fire Department or Rescue Squad Member. — Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(52) First in Forestry. — Issuable to the registered owner of a motor vehicle. The plate shall bear the words "First in Forestry". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(53) Fox Hunting. — Issuable to the registered owner of a motor vehicle. The plate may bear a phrase and a picture representing fox hunting. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(54) Fraternal Order of Police. — The plate authorized by this subdivision shall bear a representation of the Fraternal Order of Police emblem containing the letters "FOP". The Division must receive 300 applications for the plate before it may be developed. The plate is issuable to one of the following:

a. A person who presents proof of active membership in the State Lodge, Fraternal Order of Police for the year in which the license plate is sought.

b. The surviving spouse of a person who was a member of the State Lodge, Fraternal Order of Police, so long as the surviving spouse continues to renew the plate and does not remarry.

(55) Future Farmers of America. — Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(56) Girl Scout Gold Award recipient. — Issuable to a young woman who has been certified as a Girl Scout Gold Award recipient by the Girl Scouts of the U.S.A., or to her parents or guardians. The plate shall bear the insignia of the Girl Scouts of the U.S.A. and shall bear the words "Girl Scout Gold Award". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(57) Gold Star Lapel Button. — Issuable to the recipient of the Gold Star lapel button. The plate shall bear the emblem of the Gold Star lapel button and the words "Gold Star".

(58) Goodness Grows. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the "Goodness Grows in North Carolina" logo and the phrase "Agriculture: NC's #1 Industry".

(59) Greyhound Friends of North Carolina. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Greyhound Friends of North Carolina" and a picture of a greyhound.

(60) Guilford Battleground Company. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Revolutionary" used by the Guilford Battleground Company and an image that depicts General Nathaniel Greene.

(61) Harley Owners' Group. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall be designed in consultation with and approved by the Harley-Davidson Motor Company, Inc., and shall bear the words and trademark of the "Harley Owners' Group".

(62) High School Insignia Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public high school in North Carolina.

(63) Historic Vehicle Owner. — Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(64) Historical Attraction Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(65) Home Care and Hospice. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Home Care and Hospice" and the letters "HH" on the right side of the plate.

(66) HOMES4NC Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear "HOMES4NC", the logo of the North Carolina Association of Realtors Housing Opportunity Foundation, and shall be developed in conjunction with that organization. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(67) Honorary Plate. — Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(68) Hospice Care. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Hospice Care" and the letters "HC" on the right side of the plate.

(69) In God We Trust. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "In God We Trust."

(70) International Association of Fire Fighters. — The plate authorized by this subdivision shall bear the logo of the International Association of Fire Fighters. The Division may not issue the plate unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

a. A person who presents proof of active membership in the International Association of Fire Fighters for the year in which the license plate is sought.

b. The surviving spouse of a person who was a member of the International Association of Fire Fighters, so long as the surviving spouse continues to renew the plate and does not remarry.

(71) Judge or Justice. — Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(72) Juvenile Diabetes Research Foundation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Juvenile Diabetes Research" and the "sneaker" logo of the nonprofit group Juvenile Diabetes Research Foundation International, Inc.

(73) Kappa Alpha Psi Fraternity. — Issuable to the registered owner of a motor vehicle. The plate shall bear the fraternity's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(74) Kids First. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear the phrase "Kids First" and a logo of children's hands.

(75) Legion of Valor. — Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(76) Legislator. — Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word "Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(77) Leukemia & Lymphoma Society. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase and logo provided by The Leukemia & Lymphoma Society that reflects "TEAM IN TRAINING".

(78) Litter Prevention. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of litter prevention in North Carolina.

(79) Lung Cancer Research. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Lung Cancer Research" and a representation of the American Lung Association's Red Cross.

(80) Maggie Valley Trout Festival. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the Trout Festival logo.

(81) Magistrate. — Issuable to a current or retired North Carolina magistrate. A plate issued to a current magistrate shall bear the letters "MJ" followed by a number indicating the district court district the magistrate serves, then by a hyphen, and then by a number indicating the seniority of the magistrate. The Division shall use the number "9" to designate District Court Districts 9 and 9B. A plate issued to a retired magistrate shall bear the phrase "Magistrate, Retired", the letters "MJX " followed by a hyphen and the number that indicates the district court district the magistrate served, followed by a letter based on the order of issuance of the plates.

(82) March of Dimes. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation.

(83) Marine Corps League. — Issuable to a member of the Marine Corps League. The plate shall bear the words "Marine Corps League" or the letters "MCL" and the emblem of the Marine Corps League. The

Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(84) Marshal. — Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(85) Military Reservist. — Issuable to a member of a reserve component of the Armed Forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(86) Military Retiree. — Issuable to an individual who has retired from the Armed Forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired.

(87) Military Veteran. — Issuable to an individual who served honorably in the armed services of the United States. The plate shall bear the words "U.S. Military Veteran" and the name and insignia of the branch of service in which the individual served. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(88) Military Wartime Veteran. — Issuable to either a member or veteran of the armed services of the United States who served during a period of war. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. Except for World War II and Korean Conflict plates, the Division may not issue a plate authorized by this subdivision unless it receives at least 300 applications for that plate. A "period of war" is any of the following:

a. World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.
b. World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.
c. The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.
d. The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.
e. Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.
f. Operation Enduring Freedom, meaning the period beginning October 24, 2001, and ending at a date to be determined.
g. Operation Iraqi Freedom, meaning the period beginning March 19, 2003, and ending at a date to be determined.
h. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(89) Mothers Against Drunk Driving. — Issuable to the registered owner of a motor vehicle. The plate shall bear the letters "M.A.D.D." and the words "Mothers Against Drunk Driving". The Division must receive 300 or more applications for the plate before it may be developed.

(90) National Guard Member. — Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a

commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(91) National Kidney Foundation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase and logo selected by the Foundation.

(92) National Multiple Sclerosis Society. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall have the logo of the National Multiple Sclerosis Society and the telephone number "1-800-FIGHT MS" on the plate.

(93) National Rifle Association. — Issuable to the registered owner of a motor vehicle. The plate shall bear a phrase or insignia representing the National Rifle Association of America. The Division must receive 300 or more applications for the plate before it may be developed.

(94) National Wild Turkey Federation. — Issuable to the registered owner of a motor vehicle. The plate shall bear the design of a strutting wild turkey and dogwood blossoms and the words "Working For The Wild Turkey." The Division must receive 300 or more applications for the plate before it may be developed.

(95) Native American. — Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed.

(96) NC Agribusiness. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the North Carolina Agribusiness Council, Inc., and the phrase "NC's #1 Industry".

(97) NC Children's Promise. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "N.C. Children's Promise" and a logo representing the North Carolina Children's Promise organization.

(98) NC Coastal Federation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase used by the North Carolina Coastal Federation and an image that depicts the coastal area of the State.

(99) NC Tennis Foundation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Play Tennis" and the image of an implement of the tennis sport.

(100) NC Trout Unlimited. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Back the Brookie" and an image that depicts a North Carolina brook trout.

(101) North Carolina 4-H Development Fund. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing The North Carolina 4-H Development Fund.

(102) North Carolina Libraries. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "North Carolina Libraries" and bear the international logo for libraries. The Division must receive 300 or more applications for the plate before it may be developed.

(103) North Carolina Wildlife Habitat Foundation. — Issuable to the owner of a motor vehicle in accordance with G.S. 20-81.12. The plate

shall bear the logo of the North Carolina Wildlife Habitat Foundation on the left side and the background of the entire plate shall be beige or tan color. The numbers or other writing on the plate shall be black and the border shall be black. The plate shall be developed by the Division in consultation with and approved by the North Carolina Wildlife Habitat Foundation. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(104) Nurses. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20- 81.12. The plate shall bear the phrase "First in Nursing" and a representation relating to nursing.

(105) Olympic Games. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(106) Omega Psi Phi Fraternity. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name.

(107) Paramedics. — Issuable to an emergency medical technician-paramedic, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the phrase "Professional Paramedic". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(108) Partially Disabled Veteran. — Issuable to a veteran of the Armed Forces of the United States who suffered a service connected disability of less than 100%.

(109) Pearl Harbor Survivor. — Issuable to a veteran of the Armed Forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(110) Personalized. — Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(111) POW/MIA. — Issuable to the owner of a motor vehicle. The plate shall bear the official POW/MIA logo. The Division must receive 300 or more applications for the plate before it may be developed.

(112) Prince Hall Mason. — This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Prince Hall Mason" and a picture of the Masonic symbol.

(113) Prisoner of War. — Issuable to the following:
  a. A member or veteran member of the Armed Forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the Armed Forces.
  b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(114) Professional Sports Fan. — Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued.

(115) Prostate Cancer Awareness. — Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Prostate Cancer

Awareness" and a representation of a blue ribbon. The Division must receive 300 or more applications for the plate before it may be developed.

(116) Purple Heart Recipient. — Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(117) Red Hat Society. — Issuable to the registered owner of a motor vehicle. The plate shall bear a representation of The Red Hat Society. The Division must receive 300 or more applications for the plate before it may be developed.

(118) Register of Deeds. — Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(119) Retired Law Enforcement Officers. — The plate authorized by this subdivision shall bear the phrase "Retired Law Enforcement Officer " and a representation of a law enforcement badge. The Division must receive 300 or more applications for the plate before it may be developed. The plate is issuable to one of the following:

a. A retired law enforcement officer presenting to the Division, along with the application for the plate, a copy of the officer's retired identification card or letter of retirement.

b. The surviving spouse of a person who had a retired law enforcement officer plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(120) Retired State Highway Patrol. — The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

a. An individual who has retired from the North Carolina State Highway Patrol, presenting to the Division, along with the application for the plate, a copy of the retiree's retired identification card or letter of retirement.

b. The surviving spouse of a person who had retired from the State Highway Patrol who, along with the application for the plate, presents a copy of the deceased retiree's identification card or letter of retirement and certifies in writing that the retiree is deceased and that the applicant is not remarried.

(121) Rocky Mountain Elk Foundation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Rocky Mountain Elk Foundation" and a logo approved by the Rocky Mountain Elk Foundation, Inc.

(122) Save the Sea Turtles. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear the phrase "Save the Sea Turtles" and a representation related to sea turtles.

(123) Scenic Rivers. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Scenic Rivers" and a picture representing the unique beauty of the scenic rivers of North Carolina.

(124) School Technology. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina.

(125) SCUBA. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "SCUBA" and a logo of the Diver Down Flag.

(126) Shag Dancing. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear the phrase "I'd Rather Be Shaggin'" and a picture representing shag dancing.

(127) Share the Road. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a representation of a bicycle and the phrase "Share the Road".

(128) Sheriff. — Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word "Sheriff" and the letter "S" followed by a number that indicates the county the sheriff serves. A plate issued to a retired sheriff shall bear the phrase "Sheriff, Retired", the letter "S" followed by a number that indicates the county the sheriff served, and the letter "X" indicating the sheriff's retired status.

(129) Silver Star Recipient. — Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words "Silver Star".

(130) Soil and Water Conservation. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina.

(131) Special Forces Association. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a representation of the Special Forces Association shoulder patch with tabs and shall bear the words "Special Forces Association."

(132) Special Olympics. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(133) Sport Fishing. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of sport fishing in North Carolina. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(134) Square Dance Clubs. — Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(135) State Attraction. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina.

(136) State Government Official. — Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(137) Stock Car Racing Theme. — Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. This is a series of plates bearing an emblem, seal, other symbol or design displaying themes of professional stock car auto racing, or professional stock car auto racing drivers. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The plate shall be designed in consultation with and approved by the person authorized

to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The Division shall not pay a royalty for the license to use the copyrighted or registered words, symbols, trademarks, or designs associated with the plate.

(138) Street Rod Owner. — Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(139) Support Our Troops. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a soldier and a child and shall bear the words: "Support Our Troops".

(140) Surveyor Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Following In Their Footsteps" and shall bear a picture of a transit.

(141) Sweet Potato. — Issuable to the registered owner of a motor vehicle. The plate may bear a phrase and picture representing the State's official vegetable, the sweet potato. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(142) Tarheel Classic Thunderbird Club. — Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of the Tarheel Classic Thunderbird Club and the phrase "Tarheel Classic Thunderbird Club". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(143) Tobacco Heritage. — Issuable to the registered owner of a motor vehicle. The plate shall bear a picture of a tobacco leaf and plow. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(144) Transportation Personnel. — Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(145) US Equine Rescue League. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "United States Equine Rescue League", and a depiction of two horses in a circle.

(146) U.S. Navy Specialty. — Issuable to a veteran of the United States Navy Submariner Service. The plate shall bear the phrase "Silent Service Veteran" and shall bear a representation of the Submarine Service Qualification pin. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(147) U.S. Representative. — Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(148) U.S. Senator. — Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S. Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(149) University Health Systems of Eastern Carolina. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the University Health Systems of Eastern Carolina.

(150) The V Foundation for Cancer Research. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase and insignia representing The V Foundation for Cancer Research.

(151) Veterans of Foreign Wars. — Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(152) Watermelon. — Issuable to the registered owner of a motor vehicle. The plate shall bear a picture representing a slice of watermelon. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(153) Wildlife Resources. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina.

(154) Zeta Phi Beta Sorority. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the sorority's name and symbol.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1042, s. 1. (1991, c. 672, s. 2; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 1042, s. 1; 1993, c. 543, s. 2; 1995, c. 326, ss. 1-3; c. 433, ss. 1, 4.1; 1997-156, s. 1; 1997-158, s. 1; 1997-339, s. 1; 1997-427, s. 1; 1997-461, ss. 2-4; 1997-477, s. 1; 1997-484, ss. 1-3; 1998-155, s. 1; 1998-160, ss. 1, 2; 1998-163, ss. 3-5; 1999-220, s. 3.1; 1999-277, s. 1; 1999-314, s. 1; 1999-403, s. 1; 1999-450, s. 1; 1999-452, s. 16; 2000-159, ss. 1, 2; 2001-40, s. 1; 2001-483, s. 1; 2001-498, ss. 1(a), 1(b), 2; 2002-134, ss. 1-4; 2002-159, s. 68; 2003-10, s. 1; 2003-11, s. 1; 2003-68, s. 1; 2003-424, s. 2; 2004-131, s. 2; 2004-182, s. 1; 2004-185, s. 2; 2004-200, s. 1; 2005-216, ss. 2, 3; 2006-209, ss. 2, 7; 2007-400, s. 2; 2007-470, s. 1; 2007-483, ss. 2, 8(d); 2007-522, s. 1; 2009-121, s. 1; 2009-274, s. 4; 2009-376, s. 1.)

Editor's Note. — Session Laws 2006-209, s. 8 provides: "As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of Legislative Drafting and Codification to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. This section expires July 1, 2011."

Subdivisions in subsection (b) of this section have been renumbered periodically, pursuant to Session Laws 2006-209, s. 8, which authorized the Revisor of Statutes to renumber subdivisions in subsection (b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. This authority continues until 2011. Subsection (b) was again renumbered in 2009.

Session Laws 2000-159 s. 9(c), directs the Department of Transportation, the Department of Environment and Natural Resources, and the Department of Public Instruction to cooperatively develop the phrase and picture to be used on the litter prevention registration plate authorized under G.S. 20-79.4(b)(22a).

Session Laws 2001-498, s. 8, provided that the amendment by Session Laws 2001-498, s. 1(b), which added subdivisions (b)(16c) and (b)(36b) [now subdivisions (53) and (106)], relating to the Harley Owners' Group and the Rocky Mountain Elk Foundation, would expire on June 30, 2006. However, Session Laws 2006-209, s. 7, amended Session Laws 2001-498, s. 8, to delete the sunset provision, so special plates for Harley Owners' Group and Rocky Mountain Elk Foundation will not expire.

Session Laws 2007-483, s. 8(e), provides in part that any funds remaining in the Collegiate and Cultural Attraction Plate Account on October 1, 2007, that are derived from sales of the Breast Cancer Awareness plate must be transferred to the Friends for An Earlier Breast Cancer Test, Inc.

Session Laws 2009-456, s. 2, provides: "The Joint Legislative Transportation Oversight Committee, in consultation with the Revenue Laws Study Committee, must study the authorization of special registration plates under Part 5 of Article 3 of Chapter 20 of the General Statutes and the issuance of special registration plates with a design that is not a 'First in Flight' design. As part of its study, the Division of Motor Vehicles must report to the Committee the special registration plates that have been authorized but for which the Division has not received the minimum 300 applications. It is the intent of the General Assembly to repeal the authorization for a special plate that has not received at least 300 applications within two years of its authorization."

Effect of Amendments. — Session Laws 2009-121, s. 1, effective June 19, 2009, added subsections (a1) and (a2).

Session Laws 2009-274, s. 4, effective July 10, 2009, and applicable to all licenses expiring on or after that date, substituted "Armed Forces" for "armed forces" in subdivisions (b)(36), (b)(43), (b)(85), (b)(86), (b)(108), (b)(109), and (b)(113)a.

Session Laws 2009-376, s. 1, effective July 31, 2009, rewrote subdivision (b)(120).

CASE NOTES

The Sons of Confederate Veterans met the requirements of this section for issuance of special registration license plates, where the organization was similar to organizations listed in this section; it was "nationally recognized," engaged in charitable and benevolent community activities, and was listed in the comprehensive encyclopedia of associations. North Carolina Div. of Sons of Confederate Veterans v. Faulkner, 131 N.C. App. 775, 509 S.E.2d 207 (1998).

§ 20-79.5. Special registration plates for elected and appointed State government officials.

(a) Plates. — The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representatives	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17
Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	24-29

Position	Number on Plate
State Budget Officer	30
State Personnel Director	31
Chair of the State Board of Education	32
President of the U.N.C. System	33
President of the Community Colleges System	34
State Board Member, Commission Member, or State Employee Not Named in List	35-43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-103
State Board Member, Commission Member, or State Employee Not Named in List	104
Post-Release Supervision and Parole Commission Member	105-107
State Board Member, Commission Member, or State Employee Not Named in List	108-200

(b) Designation. — When the table in subsection (a) designates a range of numbers for certain officials, the number given an official in that group shall be assigned. The Governor shall assign a number for members of the Governor's staff, nonlegislative members of the Board of Economic Development, nonlegislative members of the State Ports Authority, members of State boards and commissions, and for State employees. The Attorney General shall assign a number for the Attorney General's deputies and assistants.

The first number assigned to the Alcoholic Beverage Control Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Alcoholic Beverage Control Commission members on the basis of seniority. The first number assigned to the Utilities Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Utilities Commission members on the basis of seniority. The first number assigned to the Post-Release Supervision and Parole Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Post-Release Supervision and Parole Commission members on the basis of seniority. (1991, c. 672, s. 2; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 8(a); 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4.(e); 2006-203, s. 14; 2007-483, s. 3(a).)

Effect of Amendments. — Session Laws 2007-483, s. 3(a), effective January 1, 2008, in the table in subsection (a), inserted "President of the Community Colleges System" and "State Board Member, Commission Member, or State Employee Not Named in the List" the first and second times it appears in the "Position" column, and in the "Number on Plate" column, inserted "34," "35-43," and "104," and substituted "32" for "42," "33" for "43," "97-103" for "97-104," "105-107" for "105-109," and "108-200" for "110-200."

§ 20-79.6. Special registration plates for members of the judiciary.

(a) Supreme Court. — A special plate issued to a Justice of the North Carolina Supreme Court shall bear the words "Supreme Court" and the Great Seal of North Carolina and a number from 1 through 7. The Chief Justice of the Supreme Court of North Carolina shall be issued the plate bearing the number 1 and the remaining plates shall be issued to the Associate Justices on the basis of seniority.

Special plates issued to retired members of the Supreme Court shall bear a number indicating the member's position of seniority at the time of retirement followed by the letter "X" to indicate the member's retired status.

(a1) Court of Appeals. — A special plate issued to a Judge of the North Carolina Court of Appeals shall bear the words "Court of Appeals" and the Great Seal of North Carolina and a number beginning with the number 1. The Chief Judge of the North Carolina Court of Appeals shall be issued a plate with the number 1 and the remaining plates shall be issued to the Associate Judges with the numbers assigned on the basis of seniority.

Special plates issued to retired members of the Court of Appeals shall bear a number indicating the member's position of seniority at the time of retirement followed by the letter "X" to indicate the member's retired status.

(b) Superior Court. — A special plate issued to a resident superior court judge shall bear the letter "J" followed by a number indicative of the judicial district the judge serves. The number issued to the senior resident superior court judge shall be the numerical designation of the judge's judicial district, as defined in G.S. 7A-41.1(a)(1). If a district has more than one regular resident superior court judge, a special plate for a resident superior court judge of that district shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter "A" to indicate the judge's seniority.

For any grouping of districts having the same numerical designation, other than districts where there are two or more resident superior court judges, the number issued to the senior resident superior court judge shall be the number the districts in the set have in common. A special plate issued to the other regular resident superior court judges of the set of districts shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter "A" to indicate the judge's seniority among all of the regular resident superior court judges of the set of districts. The letter assigned to a resident superior court judge will not necessarily correspond with the letter designation of the district the judge serves.

Where there are two or more regular resident superior court judges for the district or set of districts, the registration plate with the letter "A" shall be issued to the judge who, from among all the regular resident superior court judges of the district or set of districts, has the most continuous service as a regular resident superior court judge; provided if two or more judges are of equal service, the oldest of those judges shall receive the next letter registration plate. Thereafter, registration plates shall be issued based on seniority within the district or set of districts.

A special judge, emergency judge, or retired judge of the superior court shall be issued a special plate bearing the letter "J" followed by a number designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. The plate for a retired judge shall have the letter "X" after the designated number to indicate the judge's retired status.

(c) District Court. — A special plate issued to a North Carolina district court judge shall bear the letter "J" followed by a number. For the chief judge of the district court district, the number shall be equal to the sum of the numerical designation of the district court district the chief judge serves, plus 100. The number for all other judges of the district courts serving within the same district court district shall be the same number as appears on the special plate issued to the chief district judge followed by a letter of the alphabet beginning with the letter "A" to indicate the judge's seniority. A retired district court judge shall be issued a similar plate except that the numerical designation shall be followed by the letter "X" to indicate the judge's retired status.

(d) United States. — A special plate issued to a Justice of the United States Supreme Court, a Judge of the United States Circuit Court of Appeals, or a District Judge of the United States District Court residing in North Carolina shall bear the words "U.S. J" followed by a number beginning with "1". The number shall reflect the judge's seniority based on continuous service as a United States Judge as designated by the Secretary of State. A judge who has retired or taken senior status shall be issued a similar plate except that the number shall be based on the date of the judge's retirement or assumption of senior status and shall follow the numerical designation of active justices and judges. (1991, c. 672, s. 2; c. 726, s. 23; 1999-403, s. 5; 1999-456, s. 67.1.)

§ 20-79.7. Fees for special registration plates and distribution of the fees.

(a) Fees. — Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Back Country Horsemen of NC	$30.00
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
National Kidney Foundation	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00

Special Plate	Additional Fee Amount
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
AIDS Awareness	$25.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
NC Coastal Federation	$30.00
Nurses	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
ALS Association, Jim "Catfish" Hunter Chapter	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Brain Injury Awareness	$20.00
Breast Cancer Earlier Detection	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
Juvenile Diabetes Research Foundation	$20.00
Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Tennis Foundation	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00

Special Plate	Additional Fee Amount
US Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00.

(b) Distribution of Fees. — The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
AIDS Awareness	$10	$15	0	0
Alpha Phi Alpha Fraternity	$10	$10	0	0
ALS Association, Jim "Catfish" Hunter Chapter	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Back Country Horsemen of NC	$10	$20	0	0
Be Active NC	$10	$10	0	0
Brain Injury Awareness	$10	$10	0	0
Breast Cancer Earlier Detection	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0

Special Plate	SRPA	CCAPA	NHTF	PRTF
Greyhound Friends of North Carolina	$10	$10	0	0
Guilford Battleground Company	$10	$10	0	0
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
Home Care and Hospice	$10	$20	0	0
HOMES4NC	$10	$20	0	0
Hospice Care	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Juvenile Diabetes Research Foundation	$10	$10	0	0
Kids First	$10	$15	0	0
Leukemia & Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0
Lung Cancer Research	$10	$5	0	0
Maggie Valley Trout Festival	$10	$20	0	0
March of Dimes	$10	$10	0	0
National Kidney Foundation	$10	$20	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$20	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Tennis Foundation	$10	$10	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0

Special Plate	SRPA	CCAPA	NHTF	PRTF
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0.

(c) Use of Funds in Special Registration Plate Account. —

(1) The Division shall deduct the costs of special registration plates, including the costs of issuing, handling, and advertising the availability of the special plates, from the Special Registration Plate Account.

(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is annually appropriated from the Special Registration Plate Account the sum of one million dollars ($1,000,000) to provide operating assistance for the Visitor Centers:

a. on U.S. Highway 17 in Camden County, ($100,000);
b. on U.S. Highway 17 in Brunswick County, ($100,000);
c. on U.S. Highway 441 in Macon County, ($100,000);
d. in the Town of Boone, Watauga County, ($100,000);
e. on U.S. Highway 29 in Caswell County, ($100,000);
f. on U.S. Highway 70 in Carteret County, ($100,000);
g. on U.S. Highway 64 in Tyrrell County, ($100,000);
h. at the intersection of U.S. Highway 701 and N.C. 904 in Columbus County, ($100,000);
i. on U.S. Highway 221 in McDowell County, ($100,000); and
j. on Staton Road in Transylvania County, ($100,000).

(3) The Division shall transfer the remaining revenue in the Special Registration Plate Account quarterly, and funds are hereby appropriated, as follows:

a. Thirty-three percent (33%) to the account of the Department of Commerce to aid in financing out-of-state print and other media advertising under the program for the promotion of travel and industrial development in this State.

b. Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.

c. Seventeen percent (17%) to the account of the Department of Health and Human Services to promote travel accessibility for disabled persons in this State. These funds shall be used to collect and update site information on travel attractions designated by the Department of Commerce in its publications, to provide technical assistance to travel attractions concerning accommodation of disabled tourists, and to develop, print, and promote the publication ACCESS NORTH CAROLINA as provided in G.S. 168-2. Any funds allocated for these purposes that are neither spent nor obligated at the end of the fiscal year shall be transferred to the Department of Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Health and Human Services. (1967, c. 413; 1971, c. 42; 1973, c. 507, s. 5; c. 1262, s. 86; 1975, c. 716, s. 5; 1977, c. 464, s. 3; c. 771, s. 4; 1979, c. 126, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1258, s. 6; 1983, c. 848; 1985, c. 766; 1987, c. 252; c. 738, s. 140; c. 830, ss. 113(a), 116(a)-(c); 1989, c. 751, s. 7(1); c. 774, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 31; 1991, c. 672, s. 3; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 2; c. 1042, s. 2; c. 1044, ss. 33, 34; 1993, c. 321, s. 169.3(a); c. 543, s. 3; 1995, c. 163, s. 2; c. 324, s. 18.7(a); c. 433, ss. 2, 3; c. 507, s. 18.17(a); 1996, 2nd Ex. Sess., c. 18, s. 19.11(e); 1997-443, s. 11A.118(a); 1997-477, ss. 2, 3; 1997-484, ss. 4, 5; 1998-163, s. 1; 1999-277, ss. 2, 3; 1999-403, ss. 2, 3; 1999-450, ss. 2, 3; 2000-159, ss. 3, 4; 2001-414, s. 32; 2001-498, ss. 3(a), 3(b), 4(a), 4(b); 2002-134, ss. 5, 6; 2003-11, ss. 2, 3; 2003-68, ss. 2, 3; 2003-424, ss. 3, 4; 2004-124, s. 30.3A; 2004-131, ss. 3, 4; 2004-185, ss. 3, 4; 2004-200, ss. 2, 3; 2005-216, ss. 4, 5; 2005-276, s. 28.16; 2006-209, ss. 3, 4, 7; 2007-323, s. 27.20(b); 2007-345, s. 10.1; 2007-400, ss. 3, 4; 2007-483, ss. 4, 5, 8(a), (b); 2009-228, s. 1.)

Editor's Note. — This is former G.S. 20-81.3, recodified as G.S. 20-79.7 by Session Laws 1991, c. 672, s. 3.

Session Laws 2001-498, s. 8, provided that the amendments to this section by ss. 3(b) and 4(b) would expire on June 30, 2006. However, Session Laws 2006-209, s. 7, amended Session Laws 2001-498, s. 8, to delete the sunset provision, so entries for the following Special Plates in subsections (a) and (b): Harley Owners' Group and Rocky Mountain Elk Foundation, will not expire.

Session Laws 2006-209, s. 9, provides in part that the increase in the additional fee for the Breast Cancer Awareness Special Plate, as amended in Section 3 of this act, becomes effective January 1, 2007, and applies to plates issued or renewed on or after that date.

Session Laws 2007-483, s. 8(e), provides in part that any funds remaining in the Collegiate and Cultural Attraction Plate Account on October 1, 2007, that are derived from sales of the Breast Cancer Awareness plate must be transferred to the Friends for An Earlier Breast Cancer Test, Inc.

Effect of Amendments. — Session Laws 2009-228, s. 1, effective June 30, 2009, deleted "other than those designated as interstate" from the end of the first sentence in subdivision (c)(3)b.

CASE NOTES

Cited in Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

§§ 20-80 through 20-81.2: Repealed by Session Laws 1991, c. 672, s. 1, as amended by Session Laws 1991, c. 726, s. 23.

§ 20-81.3: Recodified as § 20-79.7 by Session Laws 1991, c. 672, s. 3, as amended by Session Laws 1991, c. 726, s. 23.

§§ 20-81.4 through 20-81.11: Repealed by Session Laws 1991, c. 672, s. 1, as amended by Session Laws 1991, c. 726, s. 23.

§ 20-81.12. Collegiate insignia plates and certain other special plates.

(a) Collegiate Insignia Plates. — The Division must receive 300 or more applications for a collegiate insignia license plate for a college or university before a collegiate license plate may be developed. The color, design, and material for the plate must be approved by both the Division and the alumni or alumnae association of the appropriate college or university. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of in-State collegiate insignia plates to the Board of Governors of The University of North Carolina for in-State, public colleges and universities and to the respective board of trustees for in-State, private colleges and universities in proportion to the number of collegiate plates sold representing that institution for use for academic enhancement.

(b) Historical Attraction Plates. — The Division must receive 300 or more applications for an historical attraction plate representing a publicly owned or nonprofit historical attraction located in North Carolina and listed below before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of historical attraction plates to the organizations named below in proportion to the number of historical attraction plates sold representing that organization:

(1) Historical Attraction Within Historic District. — The revenue derived from the special plate shall be transferred quarterly to the appropriate Historic Preservation Commission, or entity designated as the Historic Preservation Commission, and used to maintain property in the historic district in which the attraction is located. As used in this subdivision, the term "historic district" means a district created under G.S. 160A-400.4.

(2) Nonprofit Historical Attraction. — The revenue derived from the special plate shall be transferred quarterly to the nonprofit corporation that is responsible for maintaining the attraction for which the plate is issued and used to develop and operate the attraction.

(3) State Historic Site. — The revenue derived from the special plate shall be transferred quarterly to the Department of Cultural Resources and used to develop and operate the site for which the plate is issued. As used in this subdivision, the term "State historic site" has the same meaning as in G.S. 121-2(11).

(b1) Special Olympics Plates. — The Division must receive 300 or more applications for a special olympics plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of special olympics plates to the North Carolina Special Olympics, Inc., to be used to train volunteers to assist in the statewide games and to help pay the costs of the statewide games.

(b2) State Attraction Plates. — The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) Blue Ridge Parkway Foundation. — The revenue derived from the special plate shall be transferred quarterly to Blue Ridge Parkway Foundation for use in promoting and preserving the Blue Ridge Parkway as a scenic attraction in North Carolina. A person may obtain from the Division a special registration plate under this subdivision for the registered owner of a motor vehicle or a motorcy-

cle. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle. The Division must receive a minimum of 300 applications to develop a special registration plate for a motorcycle.

(1c) Friends of the Great Smoky Mountains National Park. — The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.

(1g) Friends of the Appalachian Trail. — The revenue derived from the special plate shall be transferred quarterly to The Appalachian Trail Conference to be used for educational materials, preservation programs, trail maintenance, trailway and viewshed acquisitions, trailway and viewshed easement acquisitions, capital improvements for the portions of the Appalachian Trail and connecting trails that are located in North Carolina, and related administrative and operating expenses.

(1i) North Carolina State Parks. — One-half of the revenue derived from the special plate shall be transferred quarterly to Natural Heritage Trust Fund established under G.S. 113-77.7, and the remaining revenue shall be transferred quarterly to the Parks and Recreation Trust Fund established under G.S. 113-44.15.

(1j) The North Carolina Aquariums. — The revenue derived from the special plate shall be transferred quarterly to the North Carolina Aquarium Society, Inc., for its programs in support of the North Carolina Aquariums.

(1m) The North Carolina Arboretum. — The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

(1p) The North Carolina Maritime Museum. — The revenue derived from the special plate shall be transferred quarterly to Friends of the Museum, North Carolina Maritime Museum, Inc., to be used for educational programs and conservation programs and for operating expenses of the North Carolina Maritime Museum.

(1t) The North Carolina Museum of Natural Sciences. — The revenue derived from the special plate shall be transferred quarterly to the Friends of the North Carolina State Museum of Natural Sciences for its programs in support of the museum.

(2) The North Carolina Zoological Society. — The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro.

(b3) Wildlife Resources Plates. — The Division must receive 300 or more applications for a wildlife resources plate with a picture representing a particular native wildlife species occurring in North Carolina before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of wildlife resources plates to the Wildlife Conservation Account established by G.S. 143-247.2.

(b4) Olympic Games. — The Division may not issue an Olympic Games special plate unless it receives 300 or more applications for the plate and the

U.S. Olympic Committee licenses, without charge, the State to develop a plate bearing the Olympic Games symbol and name. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Olympic Games plates to the N.C. Health and Fitness Foundation, Inc., which will allocate the funds as follows:

(1) Fifty percent (50%) to the U.S. Olympic Committee to assist in training olympic athletes.
(2) Twenty-five percent (25%) to North Carolina Amateur Sports to assist with administration of the State Games of North Carolina.
(3) Twenty-five percent (25%) to the Governor's Council on Physical Fitness and Health to support local fitness council development throughout North Carolina.

(b5) March of Dimes Plates. — The Division must receive 300 or more applications for a March of Dimes plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of March of Dimes plates to the Eastern Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern Carolina Chapter shall disperse the revenue proportionately among the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based upon the population of the area each Chapter represents. The money must be used for the prevention of birth defects through local community services and educational programs and through research and development.

(b6) School Technology Plates. — The Division must receive 300 or more applications for a School Technology plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of School Technology plates to the State School Technology Fund, which is established under G.S. 115C-102.6D.

(b7) Scenic Rivers Plates. — The Division must receive 300 or more applications for a Scenic Rivers plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Scenic Rivers plates to the Clean Water Management Trust Fund established in G.S. 113A-253.

(b8) Soil and Water Conservation Plates. — The Division must receive 300 or more applications for a soil and water conservation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the soil and water conservation plates to the Soil and Water Conservation Account established in G.S. 143B-297.1.

(b9) Kids First Plates. — The Division must receive 300 or more applications for a Kids First plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Kids First plates to the North Carolina Children's Trust Fund established in G.S. 7B-1302.

(b10) University Health Systems of Eastern Carolina. — The Division must receive 300 or more applications for a University Health Systems of Eastern Carolina plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of University Health Systems of Eastern Carolina plates to the Pitt Memorial Hospital Foundation, Inc., for use in the Children's Hospital of Eastern North Carolina.

(b11) Animal Lovers Plates. — The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction

Plate Account derived from the sale of the animal lovers plate to the Spay/Neuter Account established in G.S. 19A-60.

(b12) Support Public Schools Plates. — The Division must receive 300 or more applications for a Support Public Schools plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Public Schools plates to the Fund for the Reduction of Class Size in Public Schools created pursuant to G.S. 115C-472.10.

(b13) Ducks Unlimited Plates. — The Division must receive 300 or more applications for a Ducks Unlimited plate and receive any necessary licenses from Ducks Unlimited, Inc., for use of their logo before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Ducks Unlimited plates to the Wildlife Resources Commission to be used to support the conservation programs of Ducks Unlimited, Inc., in this State.

(b14) Omega Psi Phi Fraternity Plates. — The Division must receive 300 or more applications for an Omega Psi Phi Fraternity plate and receive any necessary licenses, without charge, from Omega Psi Phi Fraternity, Incorporated, before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Omega Psi Phi Fraternity plates to the Carolina Uplift Foundation, Inc., for youth activity and scholarship programs.

(b15) Litter Prevention Plates. — The Division must receive 300 or more applications for a Litter Prevention plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the litter prevention plates to the Litter Prevention Account created pursuant to G.S. 136-125.1.

(b16) Goodness Grows Plates. — The Division must receive 300 or more applications for a Goodness Grows plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Goodness Grows plates to the North Carolina Agricultural Promotions, Inc., to be used to promote the sale of North Carolina agricultural products.

(b17) Audubon North Carolina Plates. — The Division must receive 300 or more applications for an Audubon North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Audubon North Carolina plates to the National Audubon Society, Inc., a nonprofit corporation, for the account of the NC State Office to be used for bird and other wildlife conservation and educational activities in the State of North Carolina.

(b18) Special Forces Association. — The Division must receive 300 or more applications for a Special Forces Association plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Special Forces Association plates to the Airborne & Special Operations Museum in Fayetteville, North Carolina.

(b19) The V Foundation for Cancer Research. — The Division must receive 300 or more applications for a V Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of V Foundation plates to The V Foundation for Cancer Research to fund cancer research grants.

(b20) Save the Sea Turtles. — The Division must receive 300 or more applications for a Save the Sea Turtles plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Save the Sea Turtles plates to The Karen Beasley Sea Turtle Rescue and Rehabilitation Center.

(b21) Harley Owners' Group. — The Division must receive 300 or more applications for a Harley Owners' Group plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Harley Owners' Group plates to the State Board of Community Colleges to support the motorcycle safety instruction program established pursuant to G.S. 115D-72.

(b22) Rocky Mountain Elk Foundation. — The Division must receive 300 or more applications for a Rocky Mountain Elk Foundation plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Account derived from the sale of Rocky Mountain Elk Foundation plates to Rocky Mountain Elk Foundation, Inc.

(b23) NC Agribusiness. — The Division must receive 300 or more applications for a NC Agribusiness plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Agribusiness plates to the North Carolina Agribusiness Council, Inc., to be used to promote awareness of the importance of agribusiness in North Carolina.

(b24) Nurses. — The Division must receive 300 or more applications for a Nurses plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Nurses plates to the NC Foundation for Nursing for nursing scholarships for citizens of North Carolina to be awarded annually.

(b25) NC Coastal Federation. — The Division must receive 300 or more applications for a NC Coastal Federation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Coastal Federation plates to the North Carolina Coastal Federation, Inc.

(b26) Be Active NC. — The Division must receive 300 or more applications for the Be Active NC plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Be Active NC plates to Be Active North Carolina, Inc., to be used to promote physical activity in North Carolina communities.

(b27) Buffalo Soldiers. — The Division must receive 300 or more applications for the Buffalo Soldiers plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Buffalo Soldiers plates to the 9th & 10th (Horse) Cavalry Association of the Buffalo Soldiers Greater North Carolina Chapter (BSGNCC) for its public outreach programs.

(b28) Crystal Coast. — The Division must receive 300 or more applications for the Crystal Coast plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Crystal Coast plates to the Crystal Coast Artificial Reef Association to be used to promote scuba diving off the Crystal Coast.

(b29) Surveyor Plate. — The Division must receive 300 or more applications for a Surveyor plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Surveyor plates to The North Carolina Society of Surveyors Education Foundation, Inc., for public educational programs.

(b30) Zeta Phi Beta Sorority. — The Division must receive 300 or more applications for a Zeta Phi Beta Sorority plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Zeta Phi Beta Sorority plates to the Zeta Phi Beta Sorority Education Foundation, through the Raleigh office, for the benefit of undergraduate scholarships in this State.

(b31) In God We Trust. — The Division must receive 300 or more applications for the In God We Trust plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the In God We Trust plates to the Department of Crime Control and Public Safety to be deposited into The N.C. National Guard Soldiers and Airmen Assistance Fund of The Minuteman Partnership to help provide assistance to the families of North Carolina National Guardsmen who have been activated and deployed in federal service.

(b32) North Carolina 4-H Development Fund. — The Division must receive 300 or more applications for a North Carolina 4-H Development Fund plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of North Carolina 4-H Development Fund plates to The North Carolina 4-H Development Fund, to be used to support county and State 4-H programs and to provide funding for repairs and renovations at North Carolina 4-H camps and conference centers.

(b33) High School Insignia Plate. — The Division must receive 300 or more applications for a high school insignia plate for a public high school in North Carolina before a high school insignia plate may be issued for that school. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of high school insignia plates to the Department of Public Instruction to be deposited into the State Aid to Local School Administrative Units account. The Division must also send the Department of Public Instruction information as to the number of plates sold representing a particular high school. The Department of Public Instruction must annually transfer the money in the State Aid to Local School Administrative Units account that is derived from the sale of the high school insignia plates to the high schools which have a high school insignia plate in proportion to the number of high school insignia plates sold representing that school. The high school must use the money for academic enhancement.

(b34) HOMES4NC. — The Division must receive 300 or more applications for the HOMES4NC plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the HOMES4NC plates to the NCAR Housing Opportunity Foundation to promote safe, decent, and affordable housing for all in North Carolina.

(b35) First in Forestry. — The Division must receive 300 or more applications for the First in Forestry plate before the plate may be developed. The Division shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Division of Forest Resources for a State forests and forestry education program and shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Forest Education and Conservation Foundation for their programs.

(b36) El Pueblo. — The Division must receive 300 or more applications for the El Pueblo plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Plate Account derived from the sale of the El Pueblo plates to El Pueblo, Inc., for its Scholarship Fund which provides scholarships for Latino students entering any community college, college, or university in North Carolina.

(b37) Daughters of the American Revolution. — The Division must receive 300 or more applications for a Daughters of the American Revolution plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Daughters of the American Revolution plates to the North Carolina

Daughters of the American Revolution License Plate Trust Fund located in Wilmington, North Carolina, to be used to carry out the objectives of the National Society Daughters of the American Revolution including the protection of historical spots and the erection of monuments, the encouragement and support of historical research and educational endeavors, the preservation of historical documents and relics, and the promotion of all patriotic celebrations.

(b38) Stock Car Racing Theme. — The Division may issue any plate in this series without a minimum number of applications if the person providing the State with the license to use the words, logos, trademarks, or designs associated with the plate produces the plate for the State without a minimum order quantity.

The cost of the Stock Car Racing Theme plate shall include all costs to produce blank plates for issuance by the Division. Notwithstanding G.S. 66-58(b), the Division or the Department of Correction may contract for the production of the blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications including durability and retroreflectivity, and provided the plates are manufactured using high-quality embossable aluminum. The cost of the blank plates to the State shall be substantially equivalent to the price paid to the Department of Correction for license tags, as provided in G.S. 66-58(b)(15).

The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Stock Car Racing Theme plates to the North Carolina Motorsports Foundation, Inc.

(b39) Alpha Phi Alpha Fraternity. — The Division must receive 300 or more applications for the Alpha Phi Alpha Fraternity plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Alpha Phi Alpha Fraternity plates to the Association of North Carolina Alphamen (ANCA) Educational Foundation for scholarships for the benefit of African-American males in ANCA attending accredited North Carolina colleges and universities.

(b40) ARC of North Carolina. — The Division must receive 300 or more applications for the Arc of North Carolina plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Arc of North Carolina plates to The Arc of North Carolina, Inc., for its programs in support of retarded citizens in North Carolina.

(b41) Autism Society of North Carolina. — The Division must receive 300 or more applications for an Autism Society of North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Autism Society of North Carolina plates to the Autism Society of North Carolina, Inc., for support services to individuals with autism and their families.

(b42) Buddy Pelletier Surfing Foundation. — The Division must receive 300 or more applications for the Buddy Pelletier Surfing Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Buddy Pelletier Surfing Foundation to the Foundation to fund the Foundation's scholastic and humanitarian aid programs.

(b43) Coastal Conservation Association. — The Division must receive 300 or more applications for the Coastal Conservation Association plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Coastal Conservation Association plates to the Division of Marine Fisheries for its conservation programs.

(b44) Guilford Battleground Company. — The Division must receive 300 or more applications for a Guilford Battleground Company plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Guilford Battleground Company plates to the Guilford Battleground Company for its programs.

(b45) National Multiple Sclerosis Society. — The Division must receive 300 or more applications for the National Multiple Sclerosis Society plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the National Multiple Sclerosis Society plates to the National Multiple Sclerosis Society for its public awareness programs.

(b46) National Wild Turkey Federation. — The Division must receive 300 or more applications for the National Wild Turkey Federation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the National Wild Turkey Federation plates to the North Carolina State Chapter of the National Wild Turkey Federation for special projects to benefit the public.

(b47) SCUBA. — The Division must receive 300 or more applications for the SCUBA plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Plate Account derived for the sale of the SCUBA plates to the Division of Marine Fisheries for the purpose of developing the State's artificial reefs.

(b48) Share the Road. — The Division must receive 300 or more applications for the Share the Road plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Share the Road plates to the Department of Transportation, Division of Bicycle and Pedestrian Transportation, for its programs.

(b49) North Carolina Wildlife Habitat Foundation. — The Division must receive 300 or more applications for the North Carolina Wildlife Habitat Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the North Carolina Wildlife Habitat Foundation plates to the North Carolina Wildlife Habitat Foundation for its programs.

(b50) Shag Dancing. — The Division must receive 300 or more applications for the Shag Dancing plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Shag Dancing plates to the Hall of Fame Foundation.

(b51) North Carolina Libraries. — The Division must receive 300 or more applications for the North Carolina Libraries plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the North Carolina Libraries plates to the North Carolina Library Association, Inc., for the Association's public programs.

(b52) NC Trout Unlimited. — The Division must receive 300 or more applications for an NC Trout Unlimited plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Trout Unlimited plates to North Carolina Trout Unlimited for its programs.

(b53) Repealed by Session Laws 2007-483, s. 8(c), effective October 1, 2007.

(b54) Carolina's Aviation Museum. — The Division must receive 300 or more applications for a Carolina's Aviation Museum plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolina's Aviation Museum plates to the Carolina's Historic Aviation Commission, a domestic nonprofit corporation, to be used to help continue operation of the Museum.

(b55) Greyhound Friends of North Carolina. — The Division must receive 300 or more applications for a Greyhound Friends of North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Greyhound Friends of North Carolina plates to the Greyhound Friends of North Carolina, Inc., to be used for the care and upkeep of retired greyhound racers that are awaiting adoption.

(b56) Leukemia & Lymphoma Society. — The Division must receive 300 or more applications for a Leukemia & Lymphoma Society plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Leukemia & Lymphoma Society plates to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society, a State-chartered chapter of the national nonprofit organization known as The Leukemia & Lymphoma Society, Inc., a duly registered New York nonprofit corporation. These funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society which shall each use the funds for blood cancer research, awareness, and education.

(b57) Lung Cancer Research. — The Division must receive 300 or more applications for the Lung Cancer Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Lung Cancer Research plates to the American Lung Association of North Carolina, Inc., to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy.

(b58) NC Children's Promise. — The Division must receive 300 or more applications for a N.C. Children's Promise plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Children's Promise plates to The Medical Foundation of North Carolina, Incorporated, to be used to support the North Carolina Children's Promise.

(b59) Prince Hall Mason. — The Division must receive 300 or more applications for a Prince Hall Mason plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Prince Hall Mason plates to The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc., to be used for scholarships, family assistance, and other charitable causes.

(b60) Support Our Troops. — The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families.

(b61) US Equine Rescue League. — The Division must receive 300 or more applications for the US Equine Rescue League plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of US Equine Rescue League plates to the United States Equine Rescue League, Inc., to be used for the care and upkeep of rescued equines.

(b62) Back Country Horsemen of North Carolina. — The Division must receive 300 or more applications for a Back Country Horsemen of North

Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Back Country Horsemen of North Carolina plates to the Back Country Horsemen of North Carolina to promote the development and maintenance of back country trails for trail riding.

(b63) Maggie Valley Trout Festival. — The Division must receive 300 or more applications for a Maggie Valley Trout Festival plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Maggie Valley Trout Festival plates to the Town of Maggie Valley to promote trout fishing in Maggie Valley.

(b64) Home Care and Hospice. — The Division must receive 300 or more applications for the Home Care and Hospice plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Home Care and Hospice plates to The Association for Home and Hospice Care of North Carolina for its educational programs in support of home care and hospice care in North Carolina.

(b65) Hospice Care. — The Division must receive 300 or more applications for the Hospice Care plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Hospice Care plates to The Carolinas Center for Hospice and End of Life Care for its programs in support of hospice care in North Carolina.

(b66) Breast Cancer Earlier Detection. — The Division must receive 300 or more applications for a Breast Cancer Earlier Detection plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Breast Cancer Earlier Detection plates to the Friends for An Earlier Breast Cancer Test, Inc., to support services to detect breast cancer earlier.

(b67) Juvenile Diabetes Research Foundation. — The Division must receive 300 or more applications for the Juvenile Diabetes Research Foundation plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Juvenile Diabetes Research Foundation plates to the Triangle Eastern North Carolina Chapter of the Juvenile Diabetes Research Foundation International, Inc., to provide funding for research to cure diabetes. The Foundation must distribute the amount it receives to all Juvenile Diabetes Research Foundation, Inc., chapters located in the State in equal shares.

(b68) AIDS Awareness. — The Division must receive 300 or more applications for the AIDS Awareness plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of AIDS Awareness plates to The Alliance of AIDS Services-Carolina for its programs in support of AIDS awareness in North Carolina.

(b69) ALS Research. — The Division must receive 300 or more applications for the ALS Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of ALS Research plates to the ALS Association, Jim "Catfish" Hunter Chapter, to help provide funding for research to cure amyotrophic lateral sclerosis and provide support to families who have a loved one suffering from the disease.

(b70) Brain Injury Awareness. — The Division must receive 300 or more applications for the Brain Injury Awareness plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Brain Injury

Awareness plates to the Brain Injury Association of North Carolina, Inc., for support services to individuals with traumatic brain injuries.

(b71) National Kidney Foundation. — The Division must receive 300 or more applications for a National Kidney Foundation plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of National Kidney Foundation plates to the National Kidney Foundation of North Carolina, Inc., to support the Foundation's services for the detection, prevention, and treatment of diseases of the kidney and urinary tract.

(b72) NC Tennis Foundation. — The Division must receive 300 or more applications for the NC Tennis Foundation plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Tennis Foundation plates to the North Carolina Tennis Foundation, Inc., to provide funding for development and growth of tennis as a sport in North Carolina.

(c) General. — An application for a special license plate named in this section may be made at any time during the year. If the application is made to replace an existing current valid plate, the special plate must be issued with the appropriate decals attached. No refund shall be made to the applicant for any unused portion remaining on the original plate. The request for a special license plate named in this section may be combined with a request that the plate be a personalized license plate.

(c1) In accordance with G.S. 143C-1-2, the transfers mandated in this section are appropriations made by law.

(d) through (g) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1042, s. 3. (1991, c. 758, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 33; c. 1042, s. 3; 1993, c. 543, s. 5; 1995, c. 433, s. 4; 1997-427, s. 2; 1997-477, s. 4; 1997-484, s. 6; 1999-277, s. 4; 1999-403, s. 4; 1999-450, s. 4; 2000-159, ss. 5, 6; 2000-163, s. 3; 2001-498, ss. 6(a), 6(b); 2002-134, s. 7; 2003-11, s. 4; 2003-68, s. 4; 2003-424, ss. 5, 6; 2004-131, s. 5; 2004-185, s. 5; 2004-200, s. 4; 2005-216, ss. 6, 7; 2005-435, s. 40; 2006-209, ss. 5, 6, 7; 2007-323, s. 27.20(a); 2007-345, s. 10.1; 2007-400, ss. 5, 6; 2007-483, ss. 6(a), 7, 8(c).)

Editor's Note. — Session Laws, 2004-131, s. 5, Session Laws 2004-185, s. 5, and Session Laws 2004-200, s. 4, each amended this section by inserting a new subsection (b31). This section has been set out in the form above at the direction of the Revisor of Statutes.

The subsection designation for subsection (b11) was assigned by the Revisor of Statutes, the designation in Session Laws 1999-450, s. 4 having been (b10).

This section was amended by Session Laws 2000-163, s. 3 in the coded bill drafting format. It failed to incorporate the addition of subsection (b10) by Session Laws 1999-403, s. 4, and the subsequent renumbering of subsection (b10) as added by Session Laws 1999-450, s. 4, as subsection (b11). The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2001-498, s. 8, provided that s. 6(b), which amended this section by adding subsections (b21) and (b22), would expire on June 30, 2006. However, Session Laws 2006-209, s. 7, amended Session Laws 2001-498, s. 8, to delete the sunset provision, so subsections (b21) and (b22) will not expire.

Session Laws 2007-483 s. 8(e), provides: "This section becomes effective October 1, 2007, and any funds remaining in the Collegiate and Cultural Attraction Plate Account on that date that are derived from sales of the Breast Cancer Awareness plate must be transferred to the Friends for An Earlier Breast Cancer Test, Inc."

Subsections (b62) through (b70), as enacted by Session Laws 2007-483, s. 7, have been redesignated as subsections (b64) through (b72) at the direction of the Revisor of Statutes.

§ 20-82: Repealed by Session Laws 1995, c. 163, s. 3.

Part 6. Vehicles of Nonresidents of State; Permanent Plates; Highway Patrol.

§ 20-83. Registration by nonresidents.

(a) When a resident carrier of this State interchanges a properly licensed trailer or semitrailer with another carrier who is a resident of another state, and adequate records are on file in his office to verify such interchanges, the North Carolina licensed carrier may use the trailer licensed in such other state the same as if it is his own during the time the nonresident carrier is using the North Carolina licensed trailer.

(b) Motor vehicles duly registered in a state or territory which are not allowed exemptions by the Commissioner, as provided for in the preceding paragraph, desiring to make occasional trips into or through the State of North Carolina, or operate in this State for a period not exceeding 30 days, may be permitted the same use and privileges of the highways of this State as provided for similar vehicles regularly licensed in this State, by procuring from the Commissioner trip licenses upon forms and under rules and regulations to be adopted by the Commissioner, good for use for a period of 30 days upon the payment of a fee in compensation for said privilege equivalent to one tenth of the annual fee which would be chargeable against said vehicle if regularly licensed in this State: Provided that only one such permit allowed by this section shall be issued for the use of the same vehicle within the same registration year. Provided, however, that nothing in this provision shall prevent the extension of the privileges of the use of the roads of this State to vehicles of other states under the reciprocity provisions provided by law: Provided further, that nothing herein contained shall prevent the owners of vehicles from other states from licensing such vehicles in the State of North Carolina under the same terms and the same fees as like vehicles are licensed by owners resident in this State.

(c) Every nonresident, including any foreign corporation carrying on business within this State and owning and operating in such business any motor vehicle, trailer or semitrailer within this State, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State. (1937, c. 407, s. 47; 1941, cc. 99, 365; 1957, c. 681, s. 1; 1961, c. 642, s. 4; 1967, c. 1090.)

Legal Periodicals. — For comment on the 1941 amendments to this section, see 19 N.C.L. Rev. 514 (1941).

CASE NOTES

Cited in Butler v. Green Tree Fin. Servicing Corp. (In re Wester), 229 Bankr. 348 (Bankr. E.D.N.C. 1998).

§ 20-84. Permanent registration plates; State Highway Patrol.

(a) General. — The Division may issue a permanent registration plate for a motor vehicle owned by one of the persons authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, a person must provide proof of ownership, provide proof of financial responsibility as required by G.S. 20-309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section.

(b) Permanent Registration Plates. — The Division may issue permanent plates for the following motor vehicles:

(1) A motor vehicle owned by the State or one of its agencies.
(2) A motor vehicle owned by a county, city or town.
(3) A motor vehicle owned by a board of education.
(4) A motor vehicle owned by an orphanage.
(5) A motor vehicle owned by the civil air patrol.
(6) A motor vehicle owned by an incorporated emergency rescue squad.
(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") Team.
(8) A motor vehicle owned by a person and used exclusively in the support of a disaster relief effort.
(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school, to church services, and to other church related activities.
(10) A motor vehicle owned by a rural fire department, agency, or association.
(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.
(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.
(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.
(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and approved in accordance with standards adopted by the Commission for Mental Health and Human Services.
(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.
(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.

(c) State Highway Patrol. — In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy of it shall be furnished to the registration division of the Division. Information as to the individual assignments of the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that the reassignment shall appear upon the index required under this subsection within 20 days after the reassignment. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1953, c. 1264; 1955, cc. 368, 382; 1967, c. 284; 1969, c. 800; 1971, c. 460, s. 1; 1975, c. 548; c. 716, s. 5; 1977, c. 370, s. 1; 1979, c. 801, s. 9; 1981 (Reg. Sess., 1982), c. 1159; 1983, c. 593, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 885; 1991 (Reg. Sess., 1992), c. 1030, s. 11; 1997-443, s. 11A.118(a); 1999-220, s. 3; 2000-159, s. 7.)

Cross References. — As to motor vehicles owned by local boards of education, see G.S. 115C-520.

Editor's Note. — Session Laws 1971, c. 460, which amended this section, provided in s. 1.1, that the addition of the last paragraph to this section "shall not be construed as abrogating or modifying the provisions of G.S. 14-250."

OPINIONS OF ATTORNEY GENERAL

Permanent Registration of Motor Vehicle Leased to Municipality Is Improper. — See opinion of Attorney General to Mr. James H. Stamey, Department of Motor Vehicles, 41 N.C.A.G. 798 (1972).

§ 20-84.1: Repealed by Session Laws 1999-220, s. 4, effective July 1, 1999.

Part 6A. Rental Vehicles.

§ 20-84.2. Definition; reciprocity; Commissioner's powers.

(a) The term rental vehicle when used herein shall mean and include any motor vehicle which is rented or leased to another by its owner for a period of not more than 30 days solely for the transportation of the lessee or the private hauling of the lessee's personal property.

(b) Rental vehicles owned or operated by any nonresident person engaged in the business of leasing such vehicles for use in intrastate or interstate commerce shall be extended full reciprocity and exempted from registration fees only in instances where:

(1) Such person has validly licensed all rental vehicles owned by him in the state wherein the owner actually resides; provided, that such state affords equal recognition, either in fact or in law to such vehicles licensed in the State of North Carolina and operating similarly within the owner's state of residence; and further provided, that such person is not engaged in this State in the business of leasing rental vehicles; or where

(2) Such person operates vehicles which are a part of a common fleet of vehicles which are easily identifiable as a part of such fleet and such person has validly licensed in the State of North Carolina a percentage of the total number of vehicles in each weight classification in such fleet which represents the percentage of total miles travelled in North Carolina by all vehicles in each weight classification of such fleet to total miles travelled in all jurisdictions in which such fleet is operated by all vehicles in each weight classification of such fleet.

(c) The Commissioner of Motor Vehicles requires such person to submit under oath such information as is deemed necessary for fairly administering this section. The Commissioner's determination, after hearing, as to the number of vehicles in each weight classification to be licensed in North Carolina shall be final.

Any person who licenses vehicles under subsection (b)(2) above shall keep and preserve for three years the mileage records on which the percentage of the total fleet is determined. Upon request these records shall be submitted or made available to the Commissioner of Motor Vehicles for audit or review, or the owner or operator shall pay reasonable costs of an audit by the duly appointed representative of the Commissioner at the place where the records are kept.

If the Commissioner determines that the person licensing vehicles under subsection (b)(2) above should have licensed more vehicles in North Carolina or that such person's records are insufficient for proper determination the Commissioner may deny that person the right or any further benefits under this subsection until the correct number of vehicles have been licensed, and all taxes determined by the Commissioner to be due have been paid.

(d) Upon payment by the owner of the prescribed fee, the Division shall issue registration certificates and plates for the percentage of vehicles determined by the Commissioner. Thereafter, all rental vehicles properly identified and licensed in any state, territory, province, country or the District of Columbia, and belonging to such owner, shall be permitted to operate in this State on an interstate or intrastate basis. (1959, c. 1066; 1971, c. 808; 1973, c. 1446, s. 23; 1975, c. 716, s. 5.)

Editor's Note. — Part 6.1 was renumbered as Part 6A pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of section having a number or letter designation that is incompatible with the General Assembly's computer database.

Part 7. Title and Registration Fees.

§ 20-85. (See Editor's Note) Schedule of fees.

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title	$40.00
(2) Each application for duplicate or corrected certificate of title	15.00
(3) Each application of repossessor for certificate of title	15.00
(4) Each transfer of registration	15.00
(5) Each set of replacement registration plates	15.00
(6) Each application for duplicate registration card	15.00
(7) Each application for recording supplementary lien	15.00
(8) Each application for removing a lien from a certificate of title	15.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale	15.00
(10) Each application for a salvage certificate of title made by an insurer	15.00
(11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4	25.00.

(a1) **(Effective until December 31, 2017)** One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional one dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources.

(a1) **(Effective December 31, 2017)** One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional one dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Pollution Prevention Account in the Department of Environment and Natural Resources.

(b) Except as otherwise provided in subsection (a1) of this section, the fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5.

(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84. (1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11; 1975, c. 430; c. 716, s. 5; c. 727; c. 875, s. 4; c. 879, s. 46; 1979, c. 801, s. 11; 1981, c. 690, s. 19; 1989, c. 692, s. 2.1; c. 700, s. 1; c. 770, s. 74.11; 1991, c. 193, s. 8; 1993, c. 467, s. 5; 1995, c. 50, s. 2; c. 390, s. 34; c. 509, s. 135.2(i), (j); 1999-220, s. 2; 2004-77, s. 2; 2004-185, s. 6; 2005-276, s. 44.1(k); 2005-384, s. 2; 2006-255, s. 5; 2006-264, s. 35.5; 2007-142, s. 8.)

Subsection (a1) Set Out Twice. — The first version of subsection (a1) set out above is effective until December 31, 2017. The second version of subsection (a1) set out above is effective December 31, 2017.

Editor's Note. — Session Laws 2003-383, s. 4, provides that the General Assembly reaffirms its intent that the proceeds of the issuance of any bonds pursuant to the Highway Bond Act of 1996, Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, shall be used only for the purposes stated in that act, and for no other purpose.

Session Laws 2005-384, which in s. 2, amended subsections (a) and (a1), in s. 4, as amended by Session Laws 2006-255, s. 5, provides that the amendments become effective October 1, 2005, and expire July 1, 2026.

Session Laws 2005-384, s. 4, as amended by Session Laws 2006-255, s. 5, provided: "Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July 2007. Section 2 of this act becomes effective 1 October 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b) [repealed], either individually or as a group of manufacturers, on or before 1 January 2007. This act expires on 1 July 2026."

Effect of Amendments. — Session Laws 2007-142, s. 8, effective July 1, 2007, and expiring December 31, 2017, substituted "Mercury Switch Removal Account" for "Mercury Pollution Prevention Account" in the last sentence of subsection (a1).

§ 20-85.1. Registration by mail; one-day title service; fees.

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one dollar ($1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of seventy-five dollars ($75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check.

(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund. (1983, c. 50, s. 1; 1989, c. 692, s. 2.2; c. 700, s. 1; 1991, c. 689, s. 324; 2005-276, s. 44.1(l).)

Editor's Note. — Session Laws 2003-383, s. 4, provides that the General Assembly reaffirms its intent that the proceeds of the issuance of any bonds pursuant to the Highway Bond Act of 1996, Session Laws 1995 (Reg. Sess. 1996), c. 590, s. 7, shall be used only for the purposes stated in that act, and for no other purpose.

§ 20-86. Penalty for engaging in a "for-hire" business without proper license plates.

Any person, firm or corporation engaged in the business of transporting persons or property for compensation, except as otherwise provided in this Article, shall, before engaging in such business, pay the license fees prescribed by this Article and secure the license plates provided for vehicles operated for hire. Any person, firm or corporation operating vehicles for hire without having paid the tax prescribed or using private plates on such vehicles shall be liable for an additional tax of twenty-five dollars ($25.00) for each vehicle in addition to the normal fees provided in this Article; provided, that when the vehicle subject to for-hire license has attached thereto a trailer or semitrailer, each unit in the combination, including the tractor, trailer and/or semitrailer, shall be subject to the additional tax as herein prescribed; provided, further that the additional tax herein provided shall not apply to trailers having a gross weight of 3,000 pounds or less. (1937, c. 407, s. 50; 1965, c. 659.)

§ 20-86.1. International Registration Plan.

(a) The registration fees required under this Article may be proportioned for vehicles which qualify and are licensed under the provisions of the International Registration Plan.

(b) Notwithstanding any other provisions of this Chapter, the Commissioner is hereby authorized to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of any agreement entered pursuant to the International Registration Plan. (1975, c. 767, s. 2; 1981, c. 859, s. 77; c. 1127, s. 53.)

§ 20-87. Passenger vehicle registration fees.

These fees shall be paid to the Division annually for the registration and licensing of passenger vehicles, according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. — The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Vehicles. — U-drive-it vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	$51.00
Buses:	16 or more passengers	$2.00 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. — For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers	$28.00
Private passenger vehicles over fifteen passengers	31.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. — The base fee on private passenger motorcycles shall be fifteen dollars ($15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be twenty-two dollars ($22.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. — The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. — Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. — In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be eleven dollars ($11.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. — The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. — The fee for a low-speed vehicle is the same as the fee for private passengers vehicles of not more than 15 passengers. (1937, c. 407, s. 51; 1939, c. 275; 1943, c. 648; 1945, c. 564, s. 1; c. 576, s. 2; 1947, c. 220, s. 3; c. 1019, ss. 1-3; 1949, c. 127; 1951, c. 819, ss. 1, 2; 1953, c. 478; c. 826, s. 4; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1961, c. 1172, s. 1a; 1965, c. 927; 1967, c. 1136; 1969, c. 600, ss. 3-11; 1971, c. 952; 1973, c. 107; 1975, c. 716, s. 5; 1981, c. 976, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1255; 1983, c. 713, s. 61; c. 761, ss. 142, 143, 145; 1985, c. 454, s. 2; 1987, c. 333; 1989, c. 755, ss. 2, 4; c. 770, ss. 74.2, 74.3; 1989 (Reg. Sess., 1990), c. 830, s. 1; 1991 (Reg. Sess., 1992), c. 1015, s. 2; 1993, c. 320, s. 5; c. 440, s. 7; 1995 (Reg. Sess., 1996), c. 756, s. 7; 1999-438, s. 27; 1999-452, s. 17; 2001-356, s. 4; 2001-414, s. 31; 2002-72, s. 8; 2004-167, s. 5; 2004-199, s. 59; 2005-276, s. 44.1(m).)

CASE NOTES

For case citing corresponding provisions of former law, see Safe Bus v. Maxwell, 214 N.C. 12, 197 S.E. 567 (1938).

Cited in Victory Cab Co. v. City of Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951); Airlines Transp. v. Tobin, 198 F.2d 249 (4th Cir. 1952); Pilot Freight Carriers, Inc. v. Scheidt, 263 N.C. 737, 140 S.E.2d 383 (1965).

§ 20-87.1. Interchange of passenger buses with nonresident common carriers of passengers.

When a resident common carrier of passengers of this State interchanges a properly licensed bus with another common carrier of passengers who is a resident of another state, and adequate records are on file in its office to verify such interchanges, the North Carolina licensed common carrier of passengers may use the bus licensed in such other state the same as if it is its own during the time the nonresident carrier is using the North Carolina licensed bus. (1971, c. 871, s. 1; 1975, c. 716, s. 5; 1981, c. 976, s. 5.)

§ 20-88. Property-hauling vehicles.

(a) Determination of Weight. — For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	*Farmer Rate*
Not over 4,000 pounds	$0.29
4,001 to 9,000 pounds inclusive	.40
9,001 to 13,000 pounds inclusive	.50
13,001 to 17,000 pounds inclusive	.68
Over 17,000 pounds	.77

Rates Per Hundred Pound Gross Weight	*General Rate*
Not over 4,000 pounds	$0.59
4,001 to 9,000 pounds inclusive	.81
9,001 to 13,000 pounds inclusive	1.00
13,001 to 17,000 pounds inclusive	1.36
Over 17,000 pounds	1.54

(1) The minimum fee for a vehicle licensed under this subsection is twenty-four dollars ($24.00) at the farmer rate and twenty-eight dollars ($28.00) at the general rate.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated for the primary purpose of carrying or transporting the applicant's farm products, raised or produced on the applicant's farm, and farm supplies. The license plates shall not be used on a vehicle operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

(6) There shall be paid to the Division annually the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated monthly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is nineteen dollars ($19.00) for each year or part of a year. The fee is payable each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars ($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6.

(f) Repealed by Session Laws 1995, c. 163, s. 6.

(g) Repealed by Session Laws 1969, c. 600, s. 17.

(h) Repealed by Session Laws 1979, c. 419.

(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).

(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight.

(*l*) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word "permanent" on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section. (1937, c. 407, s. 52; 1939, c. 275; 1941, cc. 36, 227; 1943, c. 648; 1945, c. 569, s. 1; c. 575, s. 1; c. 576, s. 3; c. 956, ss. 1, 2; 1949, cc. 355, 361; 1951, c. 583; c. 819, ss. 1, 2; 1953, c. 568; c. 694, s. 1; c. 1122; 1955, c. 554, s. 8; 1957, c. 681, s. 2; c. 1215; 1959, c. 571; 1961, c. 685; 1963, c. 501; c. 702, ss. 2, 3; 1967, c. 1095, ss. 1, 2; 1969, c. 600, ss. 12-17; c. 1056, s. 1; 1973, c. 154, ss. 1, 2; c. 291; 1975, c. 716, s. 5; 1977, c. 638; 1979, c. 419; c. 631; 1981, c. 67; c. 690, ss. 29, 30; c. 976, s. 6; 1983, c. 43; c. 190, s. 1; c. 761, s. 144; c. 768, s. 4; 1991 (Reg. Sess., 1992), c. 947, s. 1; 1993, c. 467, s. 4; c. 543, s. 1; 1995, c. 109, s. 1; c. 163, s. 6; 1995 (Reg. Sess., 1996), c. 756, s. 8; 1997-466, s. 1; 2004-167, ss. 6, 7; 2004-199, s. 59; 2005-276, s. 44.1(n); 2008-221, s. 2.)

Effect of Amendments. — Session Laws 2008-221, s. 2, effective September 1, 2008, rewrote subdivision (b)(3).

Legal Periodicals. — For comment on the 1941 amendment, see 19 N.C.L. Rev. 514 (1941).

CASE NOTES

Computation of Tax. — Until the legislature prescribes some other rule for measurement, the tax must be computed by ascertaining the miles actually traveled by outbound shipments from the place where the carrier takes possession of the shipment, the point of origin, to the State line; and for inbound shipments, the miles actually traveled from the State line to the place where the carrier surrenders possession of the shipment to the consignee, the point of destination. The miles the shipment actually moves in this State is the numerator. The total miles actually traveled by the shipment from the point of origin to the point of destination is the denominator. That fraction determines the portion of the revenue derived from each shipment which is subject to North Carolina's six percent tax. Pilot Freight Carriers, Inc. v. Scheidt, 263 N.C. 737, 140 S.E.2d 383 (1965).

Cited in Equipment Fin. Corp. v. Scheidt, 249 N.C. 334, 106 S.E.2d 555 (1959).

OPINIONS OF ATTORNEY GENERAL

Under subdivisions (2), (3), (4) and (5) of subsection (b), large lumber and paper companies engaged in tree farming are entitled to license their trucks used to transport logs from the forest to their mills and lumber, bark and wood chips from their mills to place of sale, provided the firm or corporation is, in fact, a tree farmer and does not buy timber or forestry products for resale or haul manufactured forestry products for hire. See opinion of Attorney General to Gonzalie Rivers, Director, License and Theft Division, Department of Motor Vehicles, 41 N.C.A.G. 273 (1971).

Common Carrier Filing Hereunder May Not Report Only Loaded Miles for Purpose of Determining Gross Receipts for Tax Due. — See opinion of Attorney General to Mr. Victor J. Hines, Director, Common Carrier Tax Division, N.C. Department of Motor Vehicles, 43 N.C.A.G. 106 (1973).

Method of Reporting in Certain Circumstances May Be Changed at Other Than Beginning of Tax Year. — See opinion of Attorney General to Mr. Victor J. Hines, Director, Common Carrier Tax Division, N.C. Department of Motor Vehicles, 43 N.C.A.G. 106 (1973).

§ 20-88.01. Revocation of registration for failure to register for or comply with road tax or pay civil penalty for buying or selling non-tax-paid fuel.

(a) Road Tax. — The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with Article 36B, 36C, or 36D of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle.

(b) Non-tax-paid Fuel. — The Secretary of Revenue may notify the Commissioner of those motor vehicles for which a civil penalty imposed under G.S. 105-449.118 has not been paid. When notified, the Commissioner shall withhold or revoke the registration plate of the vehicle. (1983, c. 713, s. 54; 1989, c. 692, s. 6.1; c. 770, s. 74.5; 1991, c. 613, s. 4; 1995, c. 390, s. 11.)

§ 20-88.02. Registration of logging vehicles.

Upon receipt of an application on a form prescribed by it, the Division shall register trucks, tractor trucks, trailers, and semitrailers used exclusively in connection with logging operations in a separate category. For the purposes of this section, "logging" shall mean the harvesting of timber and transportation from a forested site to places of sale.

Fees for the registration of vehicles under this section shall be the same as those ordinarily charged for the type of vehicle being registered. (1985, c. 458, s. 1.)

§ 20-88.1. Driver education.

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose.

The driver education program established pursuant to this section must include the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter.

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving.

(b) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who do not hold teacher certificates.

Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.

(b1) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the Highway Fund.

(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of Education, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5; 1977, c. 340, s. 4; c. 1002; 1983, c. 761, s. 141; 1985 (Reg. Sess., 1986), c. 982, s. 25; 1991, c. 689, s. 32(a); 1993 (Reg. Sess., 1994), c. 761, s. 7; 1997-16, s. 3; 1997-443, s. 32.20.)

Editor's Note. — Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

§ 20-89: Repealed by Session Laws 1981, c. 976, s. 7.

§ 20-90: Repealed by Session Laws 1981, c. 976, s. 8.

§ 20-91. Audit of vehicle registrations under the International Registration Plan.

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The Department of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The Department of Revenue may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The Secretary of Revenue may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The Commissioner, based on information provided by the Department of Revenue audit, may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The results of any audit conducted under this section shall be provided to the Division. The notice of any assessments shall be sent by the Division to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges, or shall constitute cause for the denial of registration of a vehicle registered through the International Registration Plan or a vehicle no longer registered through the International Registration Plan.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9. (1937, c. 407, s. 55; 1939, c. 275; 1941, c. 36; 1943, c. 726; 1945, c. 575, s. 3; 1947,

c. 914, s. 2; 1951, c. 190, s. 1; c. 819, s. 1; 1955, c. 1313, s. 2; 1967, c. 1079, s. 2; 1975, c. 716, s. 5; c. 767, s. 3; 1981, c. 859, s. 78; c. 976, s. 9; c. 1127, s. 53; 1995 (Reg. Sess., 1996), c. 756, s. 9; 2005-435, s. 22; 2007-164, s. 7; 2007-484, s. 41.5.)

Effect of Amendments. — Session Laws 2007-164, s. 7, as amended by Session Laws 2007-484, s. 41.5, effective July 1, 2008, added the language following "reciprocal privileges" at the end of the last paragraph of subsection (c).

§§ 20-91.1, 20-91.2: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

Editor's Note. — Session Laws 2007-491, s. 47, provides in part: "The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S.105-241.2 before the effective date of this act. The repeal of G.S.105-122(c) and G.S.105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S.105-122(c1) or G.S.105-130.4(t1), as appropriate."

§ 20-92: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 10.

§ 20-93: Repealed by Session Laws 1981, c. 976, s. 10.

§ 20-94. Partial payments.

In the purchase of licenses, where the gross amount of the license fee to any one owner amounts to more than four hundred dollars ($400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until six months from the month of renewal in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one half of such fee, plus a carrying charge of three percent (3%) of the deferred portion of the license fee: Provided, that any person using any tag so purchased after the first day of six months from the month of renewal in any such year without having first provided for the payment of such draft, shall be guilty of a Class 2 misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in G.S. 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Division until the draft has been paid. Any one owner whose gross license fee amounts to more than two hundred dollars ($200.00) but not more than four hundred dollars ($400.00) may also be permitted to sign a draft in accordance with the foregoing provisions of this section provided such owner makes application for the draft during the month of renewal. (1937, c. 407, s. 58; 1943, c. 726; 1945, c. 49, ss. 1, 2; 1947, c. 219, s. 10; 1953, c. 192; 1967, c. 712; 1975, c. 716, s. 5; 1979, c. 801, s. 12; 1987 (Reg. Sess., 1988), c. 938; 1989, c. 661; 1993, c. 539, s. 344; 1994, Ex. Sess., c. 24, s. 14(c) 2004-167, s. 8; 2004-199, s. 59.)

§ 20-95. Prorated fee for license plate issued for other than a year.

(a) Calendar-Year Plate. — The fee for a calendar-year license plate issued on or after April 1 of a year is a percentage of the annual fee determined in accordance with the following table:

Date Plate Issued	Percentage of Annual Fee
April 1 through June 30	75%
July 1 through September 30	50
October 1 through December 31	25.

(a1) Plate With Renewal Sticker. — The fee for a license plate whose registration is renewed by means of a registration renewal sticker for a period of other than 12 months is a prorated amount of the annual fee. The prorated amount is one-twelfth of the annual fee multiplied by the number of full months in the period beginning the date the renewal sticker becomes effective until the date the renewal sticker expires, rounded to the nearest dollar.

(b) Scope. — This section does not apply to license plates issued pursuant to G.S. 20-79.1, 20-79.2, 20-84, 20-84.1, 20-87(9) or (10), and 20-88(c). (1937, c. 407, s. 59; 1947, c. 914, s. 3; 1979, c. 476; 1991, c. 672, s. 6; c. 726, s. 23; 1993, c. 440, s. 6; 1993 (Reg. Sess., 1994), c. 761, s. 8.)

Editor's Note. — Former section 20-84.1, referred to in subsection (b) above, has been repealed.

§ 20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.

(a) Authority to Detain Vehicles. — A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. — When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled. (1937, c. 407, s. 60; 1943, c. 726; 1949, c. 583, s. 8; c. 1207, s. 4½; c. 1253; 1951, c. 1013, ss. 1-3; 1953, c. 694, ss. 2, 3; 1955, c. 554, s. 9; 1957, c. 65, s. 11; 1959, c. 1264, s. 5; 1973, c. 507, s. 5; 1985, c. 116, ss. 1-3; 1993, c. 539, s. 345; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 109, s. 2; 1999-452, s. 18; 2000-67, s. 25.11; 2005-361, s. 1.)

CASE NOTES

The phrase "additional tax provided in this section when their vehicles are operated in excess of the licensed weight or ... in excess of the maximum weight provided in G.S. 20-118" refers to the overloading charge set out in this section. Cedar Creek Enters., Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

Monetary Charge Prescribed in Section as "Tax." — By using the word "tax" to include penalties, G.S. 20-91.2 [repealed] indicates that the monetary charge prescribed in this section is defined as a "tax" and is therefore subject to G.S. 20-91.1 [repealed]. Cedar Creek Enters., Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

By labeling the required payment for overloading as an "additional tax," this section effectively defines the "penalties prescribed in G.S. 20-118" that must be paid upon a violation of this section as a "tax." Cedar Creek Enters., Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

Invalid Penalty. — Where the DMV assessed a penalty for operating a vehicle on the highways with a gross weight in excess of that allowed under the license obtained pursuant to this section, but not in excess of the maximum axle weight limits, and such penalty was not authorized by G.S. 20-118, such penalty violated N.C. Const., Art. IV, § 1 and 3, since there was no reasonable necessity for conferring absolute judicial discretion in the DMV. Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985), decided prior to the 1985 amendment to this section.

§ 20-97. Taxes credited to Highway Fund; municipal vehicle taxes.

(a) State Taxes to Highway Fund. — All taxes levied under this Article are compensatory taxes for the use and privileges of the public highways of this State. The taxes collected shall be credited to the State Highway Fund. Except as provided in this section, no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State.

(b) General Municipal Vehicle Tax. — Cities and towns may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose.

(c) Municipal Vehicle Tax for Public Transportation. — A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars ($30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply to the cities and towns in Gaston County.

(d) Municipal Taxi Tax. — Cities and towns may levy a tax of not more than fifteen dollars ($15.00) per year upon each vehicle operated in the city or town as a taxicab. The proceeds of the tax may be used for any lawful purpose.

(e) No Additional Local Tax. — No county, city or town may impose a franchise tax, license tax, or other fee upon a motor carrier unless the tax is authorized by this section. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4; 1975, c. 716, s. 5; 1977, c. 433, s. 1; c. 880, s. 1; 1979, c. 173, s. 1; c. 216, s. 1; c. 217; c. 248, s. 1; c. 398; c. 400, s. 1; c. 458; c. 530, s. 1; c. 790; 1979, 2nd Sess., c. 1152; c. 1153, s. 1; c. 1155, s. 1; c. 1189; c. 1308, s. 1; 1981, cc. 74, 129, 210, 228, 310, 311, 312, 315, 368, 370, s. 10; c. 415, s. 10; cc. 857, 858, 991; 1981 (Reg. Sess., 1982), cc. 1202, 1250; 1983, cc. 9, 75; c. 106, s. 1; c. 188, ss. 1, 2; 1993, c. 321, s. 146, c. 479, s. 4; c. 456, s. 1; 1997-417, s. 2; 2009-166, s. 2(b).)

Local Modification. — Alleghany: 1993, c. 456, s. 1.1, 1993 (Reg. Sess., 1994), c. 761, s. 9; Cabarrus: 2005-116, s. 1; Caswell: 1977, c. 420; 1987, c. 334; 1989, c. 527, s. 2; Pamlico: 1993 (Reg. Sess., 1994), c. 751, s. 4; city of Charlotte: 1985 (Reg. Sess., 1986), c. 1009; 1991, c. 209; 1993, c. 345, s. 1; city of Durham: 2003-329, s. 1, as amended by 2004-103, s. 1, and 2008-31, s. 1 (expires June 30, 2009); city of Gastonia: 1991, c. 557, s. 1; city of Greensboro: 1991, c. 31; city of Greenville: 1993, c. 200, s. 1; city of Henderson: 1987 (Reg. Sess., 1988), c. 1066; city of Kinston: 1991 (Reg. Sess., 1992), c. 838; city of Oxford: 2008-29, s. 1; city of Raleigh: 1991, c. 229, repealed by Session Laws 2007-333, s. 2(a) (repealed effective upon the date the City of Raleigh acts to levy an additional tax under the act and is effective for taxes imposed for taxable years beginning on or after July 1, 2007); 2007-333, 2(b), as amended by 2009-160, s. 1 (effective upon the date the City of Raleigh acts to levy an additional tax under the act and is effective for taxes imposed for taxable years beginning on or after July 1, 2007); city of Winston-Salem: 2005-278, ss. 2, 3; town of Ahoskie: 1989 (Reg. Sess., 1990), c. 893; town of Apex: 2007-108, s. 2 (as to subsection (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007); town of Black Mountain: 2005-306, s. 2 (as to subsection (c)); town of Carrboro: 1991, c. 392, s. 3; 1995, c. 339, s. 5.1; 2005-306, s. 1 (as to subsection (b)); town of Cary: 1993, c. 325, s. 1; town of Chapel Hill: 2008-16, s. 2; town of Cornelius: 1985 (Reg. Sess., 1986), c. 109; town of Creedmoor: 1987, c. 610, as amended by 2008-29, s. 2; town of Davidson: 1985 (Reg. Sess., 1986), c. 1009; town of Garner: 2007-73, s. 2 (as to subsection (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007); town of Hillsborough: 1991, (Reg. Sess., 1992), c. 822; town of Holly Springs: 2007-73, s. 2 (as to subsection (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007); town of Huntersville: 1985 (Reg. Sess., 1986), c. 1009; town of Knightdale: 2007-73, s. 2 (as to subsection (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007); town of Matthews: 1985 (Reg. Sess., 1986), c. 1009; 1991, c. 209; 1993, c. 345, s. 1; 2007-109, ss. 1, 2 (as to subsections (a) and (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007); town of Mint Hill: 1985 (Reg. Sess., 1986), c. 1009; town of Morrisville: 2007-108, s. 2 (as to subsection (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007); town of Murfreesboro: 1987 (Reg. Sess., 1988), c. 953 (effective retroactively as of July 1, 1987); town of Pineville: 1985 (Reg. Sess., 1986), c. 1009; town of Rolesville: 2007-73, s. 2 (as to subsection (b), effective for taxes imposed for taxable years beginning on or after July 1, 2007).

Cross References. — As to authority of cities to impose motor vehicle license taxes, and to waive such taxes for certain persons, see G.S. 160A-213.

Editor's Note. — Session Laws 2005-278, s. 4, provides that Chapter 56 of the 1993 Session Laws is repealed effective upon the date the City of Winston-Salem acts to levy an additional tax under this act.

Session Laws 2009-166, s. 4, provides: "Section 1 of this act is effective when the City of Durham levies a tax under Section 2 of this act. The remainder of this act is effective when it becomes law. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

Effect of Amendments. — Session Laws 2009-166, s. 2(b), effective June 25, 2009, deleted "to the City of Durham or" following "does not apply" in the last sentence of subsection (c).

Legal Periodicals. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 358 (1943).

CASE NOTES

For historical background of subsections (a) and (b), see Victory Cab Co. v. City of Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

Legislative Policy to Limit Municipal Taxing Powers. — An examination of the legislative history of this section shows a fixed and unvarying legislative policy to curb the powers of municipalities in taxing motor vehicles of all kinds, including taxicabs. Victory Cab Co. v. City of Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

This section expressly prohibits a mu-

nicipality from levying a license or privilege tax in excess of $1.00 upon the use of any motor vehicle licensed by the State; it must be construed with and operates as an exception to and limitation upon the general power to levy license and privilege taxes upon businesses, trades and professions granted by charter and former G.S. 160-56. Cox v. Brown, 218 N.C. 350, 11 S.E.2d 152 (1940).

Municipalities are prohibited by this section from levying a license or privilege tax for use of its streets by motor trucks. C.D. Kenny Co. v. Town of Brevard, 217 N.C. 269, 7 S.E.2d 542 (1940).

Municipal Ordinance Held Void. — Provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the $1.00 theretofore imposed by it upon motor vehicles generally, were void, and such additional municipal tax could not be sustained upon the theory that it was a tax upon the business of operating a motor vehicle for hire rather than ownership of the vehicle, since the word "business" and the word "use" as used in the statutes mean the same thing. Cox v. Brown, 218 N.C. 350, 11 S.E.2d 152 (1940).

Those commissioned to sell license plates are not dealing in interstate commerce, but perform a general tax collecting effort. Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

Taxes Finance Construction and Maintenance of Highways. — The construction and maintenance of the State's highways are financed, in part, by taxes based on the use of the highways by motor vehicles. Pilot Freight Carriers, Inc. v. Scheidt, 263 N.C. 737, 140 S.E.2d 383 (1965).

Village of Bald Head Island Exempt. — General assembly has explicitly authorized the Village of Bald Head Island, North Carolina, to exempt itself from G.S. ch. 20, art. 2, which includes G.S. 20-97. Bald Head Island, Ltd. v. Village of Bald Head Island, 175 N.C. App. 543, 624 S.E.2d 406, 2006 N.C. App. LEXIS 177 (2006).

For cases decided under corresponding provisions of former law, see State v. Fink, 179 N.C. 712, 103 S.E. 16 (1920); Southeastern Express Co. v. City of Charlotte, 186 N.C. 668, 120 S.E. 475 (1923); State v. Jones, 191 N.C. 371, 131 S.E. 734 (1926).

Applied in Cooke v. Futrell, 37 N.C. App. 441, 246 S.E.2d 65 (1978).

OPINIONS OF ATTORNEY GENERAL

When Vehicle Is "Resident" in Municipality. — The considerations determinative of when a vehicle is "resident" in a municipality, as the term is used in subsection (a) of this section, are the residence of the owner, the "residence" of the vehicle, whether or not the owner is an individual person, the type of vehicle and its use. See opinion of Attorney General to Gillam & Gillam, 45 N.C.A.G. 185 (1975).

Applicability of License Tax and License Plate Display Requirements. — Under this section, the license tax and the requirement that license plates be displayed are applicable to vehicles which become "resident" in the town after January 1 of any year. See opinion of Attorney General to Gillam & Gillam, 45 N.C.A.G. 185 (1975).

License Tax Liability Where Vehicle Becomes Resident in Another Municipality in Same Year. — If a license plate is once issued for a motor vehicle during a particular year by a municipality, the owner is liable for another one dollar ($1.00) license tax during the same year if the vehicle becomes "resident" in another municipality. See opinion of Attorney General to Gillam & Gillam, 45 N.C.A.G. 185 (1975).

§§ 20-98, 20-99: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

Cross References. — For present provisions as to refund of overpayment, see now G.S. 105-163.16.

Editor's Note. — Session Laws 2007-491, s. 47, provides in part: "The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S.105-241.2 before the effective date of this act. The repeal of G.S.105-122(c) and G.S.105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S.105-122(c1) or G.S.105-130.4(t1), as appropriate."

§ 20-100. Vehicles junked or destroyed by fire or collision.

Upon satisfactory proof to the Commissioner that any motor vehicle, duly licensed, has been completely destroyed by fire or collision, or has been junked and completely dismantled so that the same can no longer be operated as a motor vehicle, the owner of such vehicle may be allowed on the purchase of a new license for another vehicle a credit equivalent to the unexpired proportion of the cost of the original license, dating from the first day of the next month after the date of such destruction. (1937, c. 407, s. 64; 1939, c. 369, s. 1.)

CASE NOTES

Cited in State v. Ezell, 159 N.C. App. 103, 582 S.E.2d 679, 2003 N.C. App. LEXIS 1418 (2003).

§ 20-101. Certain business vehicles to be marked.

(a) A motor vehicle that is subject to 49 C.F.R. Part 390, the federal motor carrier safety regulations, shall be marked as required by that Part.

(b) A motor vehicle with a gross vehicle weight rating of more than 10,000 pounds that is used in intrastate commerce shall have the name of the owner printed on each side of the vehicle in letters not less that three inches in height, unless either of the following applies:

(1) The motor vehicle is subject to 49 C.F.R. Part 390.

(2) The motor vehicle is a farm vehicle as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12).

(c) A motor vehicle that is subject to regulation by the North Carolina Utilities Commission shall be marked as required by that Commission and as otherwise required by this section.

(d) A motor vehicle equipped to tow or transport another motor vehicle, hired for the purpose of towing or transporting another motor vehicle, shall have the name and address of the registered owner of the vehicle, and the name of the business or person being hired if different, printed on the side of the vehicle in letters not less than three inches in height. This subsection shall not apply to motor vehicles subject to 49 C.F.R. Part 390. (1937, c. 407, s. 65; 1951, c. 819, s. 1; 1967, c. 1132; 1985, c. 132; 1995 (Reg. Sess., 1996), c. 756, s. 12; 2000-67, s. 25.8; 2001-487, s. 50(d); 2007-404, s. 1; 2009-376, s. 3.)

Effect of Amendments. — Session Laws 2009-376, s. 3, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, rewrote subsection (b).

OPINIONS OF ATTORNEY GENERAL

As to inapplicability to taxicab which seats nine or fewer passengers and is not operated on a regular route or between termini, see opinion of Attorney General to Mr. W. Vance McCown, 41 N.C.A.G. 547 (1971).

§ 20-101.1. Conspicuous disclosure of dealer administrative fees.

(a) A motor vehicle dealer shall not charge an administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle, whether or not that fee relates to costs or charges that the dealer is required to pay to third parties or is attributable to the dealer's internal overhead or profit, unless the dealer complies with all of the following requirements:

(1) The dealer shall post a conspicuous notice in the sales or finance area of the dealership measuring at least 24 inches on each side informing customers that a fee regulated by this section may or will be charged and the amount of the fee.

(2) The fact that the dealer charges a fee regulated by this section and the amount of the fee shall be disclosed whenever the dealer engages in the price advertising of vehicles.

(3) The amount of a fee regulated by this section shall be separately identified on the customer's buyer's order, purchase order, or bill of sale.

(b) Nothing contained in this section or elsewhere under the law of this State shall be deemed to prohibit a dealer from, in the dealer's discretion, deciding not to charge an administrative, origination, documentary, procurement, or other similar administrative fee or reducing the amount of the fee in certain cases, as the dealer may deem appropriate.

(c) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, manufacturer branch, distributor, or distributor branch to prevent, attempt to prevent, prohibit, coerce, or attempt to coerce, any new motor vehicle dealer located in this State from charging any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle. It shall further be unlawful for any manufacturer, manufacturer branch, distributor, or distributor branch, notwithstanding the terms of any contract, franchise, novation, or agreement, to prevent or prohibit any new motor vehicle dealer in this State from participating in any program relating to the sale of motor vehicles or reduce the amount of compensation to be paid to any dealer in this State, based upon the dealer's willingness to refrain from charging or reduce the amount of any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle. (2001-487, s. 123.5; 2001-492, s. 1.)

Editor's Note. — Session Laws 2001-492, s. 3, provides: "Nothing contained in Section 1 or 2 above [ss. 1 or 2 of Session Laws 2001-492, which enacted G.S. 20-101.1 and 20-101.2] or elsewhere under the law of this State shall be deemed as imposing any civil or criminal liability on motor vehicle dealers located in this State for failure to disclose any of the information required to be in Sections 1 and 2 above prior to the effective date of this act."

Session Laws 2001-492, s. 6, as amended by Session Laws 2001-487, s. 123.5, makes this section effective December 31, 2001.

§ 20-101.2. Conspicuous disclosure of dealer finance yield charges.

(a) A motor vehicle dealer shall not charge a fee or receive a commission or other compensation for providing, procuring, or arranging financing for the retail purchase or lease of a motor vehicle, unless the dealer complies with both of the following requirements:

(1) The dealer shall post a conspicuous notice in the sales or finance area of the dealership measuring at least 24 inches on each side informing customers that the dealer may receive a fee, commission, or other compensation for providing, procuring, or arranging financing for the retail purchase or lease of a motor vehicle, for which the customer may be responsible.

(2) The dealer shall disclose conspicuously on the purchase order or buyer's order, or on a separate form provided to the purchaser at or prior to the closing on the sale of the vehicle, that the dealer may

receive a fee, commission, or other compensation for providing, procuring, or arranging financing for the retail purchase or lease of a motor vehicle, for which the customer may be responsible.

(b) Nothing contained in this section or elsewhere under the law of this State shall be deemed to require that a motor vehicle dealer disclose to any actual or potential purchaser the dealer's contractual arrangements with any finance company, bank, leasing company, or other lender or financial institution, or the amount of markup, profit, or compensation that the dealer will receive in any particular transaction or series of transactions from the charging of such fees. (2001-487, s. 123.5; 2001-492, s. 2.)

Editor's Note. — Session Laws 2001-492, s. 3, provides: "Nothing contained in Section 1 or 2 above [ss. 1 or 2 of Session Laws 2001-492, which enacted G.S. 20-101.1 and 20-101.2] or elsewhere under the law of this State shall be deemed as imposing any civil or criminal liability on motor vehicle dealers located in this State for failure to disclose any of the information required to be in Sections 1 and 2 above prior to the effective date of this act."

Session Laws 2001-492, s. 6, as amended by Session Laws 2001-487, s. 123.5, makes this section effective December 31, 2001.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102. Report of stolen and recovered motor vehicles.

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall report such theft to the Division. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall report the fact of such recovery to the Division. (1937, c. 407, s. 66; 1975, c. 716, s. 5; 2005-182, s. 4.)

§ 20-102.1. False report of theft or conversion a misdemeanor.

A person who knowingly makes to a peace officer or to the Division a false report of the theft or conversion of a motor vehicle shall be guilty of a Class 2 misdemeanor. (1963, c. 1083; 1975, c. 716, s. 5; 1993, c. 539, s. 346; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-102.2. Report of failure to return hired motor vehicles.

Every sheriff, chief of police, or peace officer, upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167, shall report the failure to the National Crime Information Center. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Crime Information Center. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible. (2005-182, s. 5.)

§ 20-103. Reports by owners of stolen and recovered vehicles.

The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the Division of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement. Every owner or other person who has given any such notice must notify the Division of the recovery of such vehicle. (1937, c. 407, s. 67; 1975, c. 716, s. 5.)

§ 20-104. Action by Division on report of stolen or embezzled vehicles.

(a) The Division, upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided, shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

(b) The Division shall at least once each month compile and maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding month, and such lists shall be open to inspection by any peace officer or other persons interested in any such vehicle. (1937, c. 407, s. 68; 1975, c. 716, s. 5.)

§ 20-105: Repealed by Session Laws 1973, c. 1330, s. 39.

Cross References. — For present provisions as to unauthorized use of a conveyance, see G.S. 14-72.2.

§ 20-106. Receiving or transferring stolen vehicles.

Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer shall be punished as a Class H felon. (1937, c. 407, s. 70; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1252; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to seizure and forfeiture of conveyances used in committing a crime under this section, see G.S. 14-86.1. As to penalty for a felony violation of this Article, see G.S. 20-177.

Legal Periodicals. — For survey of 1976 case law on criminal law, see 55 N.C.L. Rev. 976 (1977).

CASE NOTES

Constitutionality. — This section is constitutional. State v. Lockamy, 31 N.C. App. 713, 230 S.E.2d 565 (1976).

The language "or has reason to believe has been stolen or unlawfully taken" does not create a matter of conjecture as to what is prohibited and is not unconstitutionally vague so as to deprive the defendant of due process of law. State v. Rook, 26 N.C. App. 33, 215 S.E.2d 159, appeal dismissed, 288 N.C. 250, 217 S.E.2d 674 (1975).

Purpose of Section. — The purpose of this section is to discourage the possession of stolen vehicles by one who knows a vehicle is stolen or has reason to believe that it is stolen. State v. Rook, 26 N.C. App. 33, 215 S.E.2d 159, appeal dismissed, 288 N.C. 250, 217 S.E.2d 674 (1975); State v. Abrams, 29 N.C. App. 144, 223 S.E.2d 516 (1976); State v. Murchinson, 39 N.C. App. 163, 249 S.E.2d 871 (1978), overruled on other grounds in State v. Wesson, 45 N.C. App. 510, 263 S.E.2d 298 (1980).

Elements. — Defendant charged with possession of stolen property under G.S. 14-71.1 or possession of a stolen vehicle under G.S. 20-106 could be convicted if the State produced sufficient evidence that defendant possessed stolen property (i.e. a vehicle), which he knew or had reason to believe had been stolen or taken. State v. Bailey, 157 N.C. App. 80, 577 S.E.2d 683, 2003 N.C. App. LEXIS 377 (2003).

Provision as to Police Officers an Exception and Not an Element of Offense. — The provision exculpating police officers in the line of duty was apparently placed in the statute out of an abundance of legislative caution. Such a provision may have been thought necessary in light of the fact that the crime charged merely requires possession with knowledge that the vehicle is stolen, not criminal intent. The provision is an exception to the statute, not an element of the offense. State v. Murchinson, 39 N.C. App. 163, 249 S.E.2d 871 (1978), overruled on other grounds in State v. Wesson, 45 N.C. App. 510, 263 S.E.2d 298 (1980).

No Felonious Intent Required. — Neither the construction of this section nor the purpose for which it was enacted compels a requirement that the doer of the act have a felonious intent. State v. Abrams, 29 N.C. App. 144, 223 S.E.2d 516 (1976).

This section requires only that the State prove defendant knew or had reason to believe that the vehicle in his possession was stolen. No felonious intent is required. State v. Murchinson, 39 N.C. App. 163, 249 S.E.2d 871 (1978), overruled on other grounds in State v. Wesson, 45 N.C. App. 510, 263 S.E.2d 298 (1980).

Because the purpose of this section is to discourage the possession of stolen vehicles the State need only prove that the defendant knew or had reason to believe that the vehicle in his possession was stolen. No felonious intent is required. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

Section 14-71 Not Lesser Included Offense. — The offenses under this section and G.S. 14-71 are separate offenses; the latter is not a lesser included offense under the former. State v. Carlin, 37 N.C. App. 228, 245 S.E.2d 586 (1978), overruled on other grounds, State v. Wesson, 45 N.C. App. 510, 263 S.E.2d 298 (1980).

Double Jeopardy. — Defendant's conviction and sentencing for possession of a stolen vehicle, in violation of G.S. 20-106, and possession of stolen property, in violation of G.S. 14-71.1, for possession of the same vehicle, violated double jeopardy because the Legislature did not intend to punish a defendant twice for possession of the same property. State v. Bailey, 157 N.C. App. 80, 577 S.E.2d 683, 2003 N.C. App. LEXIS 377 (2003).

Evidence Held Insufficient to Show Knowledge or Reason to Know. — Evidence that defendant was in possession of stolen vehicle approximately one month after it was stolen was not sufficient to raise an inference that defendant knew or had reason to believe that the automobile was stolen, where the evidence offered by the State demonstrated the intervening agency of others. State v. Leonard, 34 N.C. App. 131, 237 S.E.2d 347 (1977).

Evidence tending to show that public vehicle identification number plate on an automobile had been replaced was not sufficient to raise an inference that defendant knew or had reason to believe that the vehicle was stolen, where there was no evidence that the alteration was made by defendant or with his knowledge. State v. Leonard, 34 N.C. App. 131, 237 S.E.2d 347 (1977).

Decision of the North Carolina Criminal Justice Education and Training Standards Commission, which revoked and suspended a law enforcement officer's certification as a result of finding that he violated G.S. 20-106 by knowingly possessing a stolen vehicle, was reversed and remanded for the Commission to consider the elements of the offense of possession of a stolen vehicle because the Commission's order merely citing the statute was insufficient evidence to satisfy the elements of the statute. Powell v. N.C. Crim. Justice Educ. & Training Stds. Comm'n, 165 N.C. App. 848, 600 S.E.2d 56, 2004 N.C. App. LEXIS 1525 (2004).

Effect of Doctrine of Possession of Recently Stolen Goods. — The doctrine of possession of recently stolen goods is, under appropriate circumstances, applicable to justify denial of a motion for nonsuit in a case charging illegal possession of a stolen vehicle pursuant to this section. State v. Murchinson, 39 N.C. App. 163, 249 S.E.2d 871 (1978), overruled on other grounds in State v. Wesson, 45 N.C. App. 510, 263 S.E.2d 298 (1980).

Evidence of Possession Held Sufficient. — Where defendant had control over vehicle, since he was driving it, the State's evidence in the case was sufficient to go to the jury on the element of possession. State v. Suitt, 94 N.C. App. 571, 380 S.E.2d 570 (1989).

Evidence was sufficient to show defendant knew or had reason to think the car he was driving was stolen as (1) he was driving the car several hours after it was stolen; (2) he said the vehicle belonged to a "friend" whose name he would not give; (3) the car's owner said he gave no one permission to drive it on the day in question; and (4) defendant had the owner's keys. State v. Bailey, 157 N.C. App. 80, 577 S.E.2d 683, 2003 N.C. App. LEXIS 377 (2003).

Applied in State v. Craver, 70 N.C. App. 555, 320 S.E.2d 431 (1984).

Cited in State v. Marsh, 187 N.C. App. 235, 652 S.E.2d 744, 2007 N.C. App. LEXIS 2357 (2007).

§ 20-106.1. Fraud in connection with rental of motor vehicles.

Any person with the intent to defraud the owner of any motor vehicle or a person in lawful possession thereof, who obtains possession of said vehicle by agreeing in writing to pay a rental for the use of said vehicle, and further agreeing in writing that the said vehicle shall be returned to a certain place, or at a certain time, and who willfully fails and refuses to return the same to the place and at the time specified, or who secretes, converts, sells or attempts to sell the same or any part thereof shall be guilty of a Class I felony. (1961, c. 1067; 1993, c. 539, s. 1253; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Cited in Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985); Nationwide Mut. Ins. Co. v. Land, 318 N.C. 551, 350 S.E.2d 500 (1986).

§ 20-106.2. Sublease and loan assumption arranging regulated.

(a) As used in this section:

(1) "Buyer" means a purchaser of a motor vehicle under the terms of a retail installment contract. "Buyer" shall include any co-buyer on the retail installment contract.

(2) "Lease" means an agreement between a lessor and lessee whereby the lessee obtains the possession and use of a motor vehicle for the period of time, for the purposes, and for the consideration set forth in the agreement whether or not the agreement includes an option to purchase the motor vehicle; provided, however, "lease" shall not include a residential rental agreement of a manufactured home which is subject to Chapter 42 of the General Statutes.

(3) "Lessor" means any person who in the regular course of business or as a part of regular business activity leases motor vehicles under motor vehicle lease agreements, purchases motor vehicle lease agreements, or any sales finance company that purchases motor vehicle lease agreements.

(4) "Lessee" means a person who obtains possession and use of a motor vehicle through a motor vehicle lease agreement. "Lessee" shall include any co-lessee listed on the motor vehicle lease agreement.

(5) "Person" means an individual, partnership, corporation, association or any other group however organized.

(6) "Security interest" means an interest in personal property that secures performance of an obligation.

(7) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or retail installment sales contracts have been sold.

(8) "Sublease" means an agreement whether written or oral:

a. To transfer to a third party possession of a motor vehicle which is and will, while in that third party's possession, remain the subject of a security interest which secures performance of a retail installment contract or consumer loan; or

b. To transfer or assign to a third party any of the buyer's rights, interests, or obligations under the retail installment contract or consumer loan; or

c. To transfer to a third party possession of a motor vehicle which is and will, while in the third party's possession, remain the subject of a motor vehicle lease agreement; or

d. To transfer or assign to a third party any of the lessee's or buyer's rights, interests, or obligations under the motor vehicle lease agreement.

(9) "Sublease arranger" means a person who engages in the business of inducing by any means buyers and lessees to enter into subleases as sublessors and inducing third parties to enter into subleases as sublessees, however such contracts may be called. "Sublease arranger" does not include the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium which disseminates any advertisement or promotion of any act governed by this section.

(10) "Third party" means a person other than the buyer or the lessee of the vehicle.

(11) "Transfer" means to transfer possession of a motor vehicle by means of a sale, loan assumption, lease, sublease, or lease assignment.

(b) A sublease arranger commits an offense if the sublease arranger arranges a sublease of a motor vehicle and:

(1) Does not first obtain written authorization for the sublease from the vehicle's secured party or lessor; or

(2) Accepts a fee without having first obtained written authorization for the sublease from the vehicle's secured party or lessor; or

(3) Does not disclose the location of the vehicle on the request of the vehicle's buyer, lessee, secured party, or lessor; or

(4) Does not provide to the third party new, accurate disclosures under the Consumer Credit Protection Act, 15 U.S.C. Section 1601, et seq.; or

(5) Does not provide oral and written notice to the buyer or lessee that he will not be released from liability; or

(6) Does not ensure that all rights under warranties and service contracts regarding the motor vehicle transfer to the third party, unless a pro rata rebate for any unexpired coverage is applied to reduce the third party's cost under the sublease; or

(7) Does not take reasonable steps to ensure that the third party is financially able to assume the payment obligations of the buyer or lessee according to the terms of the lease agreement, retail installment contract, or consumer loan.

(c) It is not a defense to prosecution under subsection (b) of this section that the motor vehicle's buyer or lessee, secured party or lessor has violated a contract creating a security interest or lease in the motor vehicle, nor may any sublease arranger shift to the lessee, buyer or third party the arranger's duty under subdivision (b)(1) or (b)(2) to obtain prior written authorization for formation of a sublease.

(d) An offense under subdivision (b)(1) or (b)(2) of this section is a Class I felony.

(e) All other offenses under subsection (b) of this section are Class 1 misdemeanors. Each failure to disclose the location of the vehicle under subdivision (b)(3) shall constitute a separate offense.

(f) Any buyer, lessee, sublessee, secured party or lessor injured or damaged by reason of any act in violation of this section, whether or not there is a conviction for the violation, may file a civil action to recover damages based on the violation with the following available remedies:

(1) Three times the amount of any actual damages or fifteen hundred dollars ($1500), whichever is greater;

(2) Equitable relief, including a temporary restraining order, a preliminary or permanent injunction, or restitution of money or property;

(3) Reasonable attorney fees and costs; and

(4) Any other relief which the court deems just.

The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

(g) This section and G.S. 14-114 and G.S. 14-115 are mutually exclusive and prosecution under those sections shall not preclude criminal prosecution or civil action under this section. (1989 (Reg. Sess., 1990), c. 1011; 1993, c. 539, ss. 347, 1254; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-107. Injuring or tampering with vehicle.

(a) Any person who either individually or in association with one or more other persons willfully injures or tampers with any vehicles or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a Class 2 misdemeanor.

(b) Any person who with intent to steal, commit any malicious mischief, injury or other crime, climbs into or upon a vehicle, whether it is in motion or at rest, or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended, is guilty of a Class 2 misdemeanor. (1937, c. 407, s. 71; 1965, c. 621, s. 1; 1993, c. 539, s. 348; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Subsection (a) Not a Lesser Included Offense of § 14-56. — A lesser included offense is one composed of some, but not all, of the elements of the greater crime, and which does not have any element not included in the greater offense; while most of the elements of subsection (a) of this section are present in G.S. 14-56, neither injuring or tampering with the vehicle itself nor breaking or removing a part of it (elements of this section) are part of the greater offense found in G.S. 14-56. State v. Carver, 96 N.C. App. 230, 385 S.E.2d 145 (1989).

Neither Part of G.S. 20-107 is a Lesser Included Offense of G.S. 14-56. — While most of the elements of G.S. 20-107(a) are present in G.S. 14-56, neither injuring or tampering with the vehicle itself, nor breaking or removing a part of the car are part of the offense in G.S. 14-56; thus, neither part of G.S. 20-107 is a lesser included offense of G.S. 14-56. State v. Jackson, 162 N.C. App. 695, 592 S.E.2d 575, 2004 N.C. App. LEXIS 265 (2004).

Cited in Kirschbaum v. McLaurin Parking Co., 188 N.C. App. 782, 656 S.E.2d 683, 2008 N.C. App. LEXIS 258 (2008).

§ 20-108. Vehicles or component parts of vehicles without manufacturer's numbers.

(a) Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine or transmission or component part which has been stolen or removed from a motor vehicle and from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the Division has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine or transmission or component part is guilty of a Class 2 misdemeanor.

(b) The Commissioner and such officers and inspectors of the Division of Motor Vehicles as he has designated may take and possess any motor vehicle or component part if its engine number, vehicle identification number, or manufacturer's serial number has been altered, changed, or obliterated or if such officer has probable cause to believe that the driver or person in charge of the motor vehicle or component part has violated subsection (a) above. Any officer who so takes possession of a motor vehicle or component part shall immediately notify the Division of Motor Vehicles and the rightful owner, if known. The notification shall contain a description of the motor vehicle or component part and any other facts that may assist in locating or establishing the rightful ownership thereof or in prosecuting any person for a violation of the provisions of this Article.

(c) Within 15 days after seizure of a motor vehicle or component part pursuant to this section, the Division shall send notice by certified mail to the person from whom the property was seized and to all claimants to the property whose interest or title is in the registration records in the Division of Motor Vehicles that the Division has taken custody of the motor vehicle or component part. The notice shall also contain the following information:

(1) The name and address of the person or persons from whom the motor vehicle or component part was seized;

(2) A statement that the motor vehicle or component part has been seized for investigation as provided in this section and that the motor vehicle or component part will be released to the rightful owner:

a. Upon a determination that the identification number has not been altered, changed, or obliterated; or

b. Upon presentation of satisfactory evidence of the ownership of the motor vehicle or component part if no other person claims an interest in it within 30 days of the date the notice is mailed. Otherwise, a hearing regarding the disposition of the motor vehicle or component part may take place in a court having jurisdiction.

(3) The name and address of the officer to whom evidence of ownership of the motor vehicle or component part may be presented; and

(4) A copy statement of the text contained in this section.

(d) Whenever a motor vehicle or component part comes into the custody of an officer, the Division of Motor Vehicles may commence a civil action in the District Court in the county in which the motor vehicle or component part was seized to determine whether the motor vehicle or component part should be destroyed, sold, converted to the use of the Division or otherwise disposed of by an order of the court. The Division shall give notice of the commencement of such an action to the person from whom the motor vehicle or component part was seized and all claimants to the property whose interest or title is in the registration records of the Division of Motor Vehicles. Notice shall be by certified mail sent within 10 days after the filing of the action. In addition, any possessor of a motor vehicle or component part described in this section may commence a civil action under the provisions of this section, to which the Division of Motor Vehicles may be made a party, to provide for the proper disposition of the motor vehicle or component part.

(e) Nothing in this section shall preclude the Division of Motor Vehicles from returning a seized motor vehicle or component part to the owner following presentation of satisfactory evidence of ownership, and, if determined necessary, requiring the owner to obtain an assignment of an identification number for the motor vehicle or component part from the Division of Motor Vehicles.

(f) No court order providing for disposition shall be issued unless the person from whom the motor vehicle or component was seized and all claimants to the property whose interest or title is in the registration records in the Division of Motor Vehicles are provided a postseizure hearing by the court having jurisdiction. Ten days' notice of the postseizure hearing shall be given by certified mail to the person from whom the motor vehicle was seized and all claimants to the property whose interest or title is in the registration records in the Division of Motor Vehicles. If such motor vehicle or component part has been held or identified as evidence in a pending civil or criminal action or proceeding, no final disposition of such motor vehicle or component part shall be ordered without prior notice to the parties in said proceeding.

(g) At a hearing held pursuant to any action filed by the Division to determine the disposition of any motor vehicle or component part seized pursuant to this section, the court shall consider the following:

(1) If the evidence reveals either that the motor vehicle or component part identification number has not been altered, changed or obliterated or that the identification number has been altered, changed, or obliterated but satisfactory evidence of ownership has been presented, the motor vehicle or component part shall be returned to the person entitled to it. If ownership cannot be established, nothing in this section shall preclude the return of said motor vehicle or component part to a good faith purchaser following the presentation of satisfactory evidence of ownership thereof and, if necessary, upon the good faith purchaser's obtaining an assigned number from the Division of Motor Vehicles and posting a reasonable bond for a period of three years. The amount of the bond shall be set by the court.

(2) If the evidence reveals that the motor vehicle or component part identification number has been altered, changed, or obliterated and satisfactory evidence of ownership has not been presented, the motor vehicle or component part shall be destroyed, sold, converted to the use of the Division of Motor Vehicles or otherwise disposed of, as provided for by order of the court.

(h) At the hearing, the Division shall have the burden of establishing, by a preponderance of the evidence, that the motor vehicle or component part has been stolen or that its identification number has been altered, changed, or obliterated.

(i) At the hearing any claimant to the motor vehicle or component part shall have the burden of providing satisfactory evidence of ownership.

(j) An officer taking into custody a motor vehicle or component part under the provisions of this section is authorized to obtain necessary removal and storage services, but shall incur no personal liability for such services. The person or company so employed shall be entitled to reasonable compensation as a claimant under (e), and shall not be deemed an unlawful possessor under (a). (1937, c. 407, s. 72; 1965, c. 621, s. 2; 1973, c. 1149, ss. 1, 2; 1975, c. 716, s. 5; 1983, c. 592; 1985, c. 764, s. 22; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 539, s. 349; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — For provision that G.S. 14-160.1, relating to the alteration, destruction or removal of permanent identification marks from personal property, shall not affect this section, see G.S. 14-160.1(d).

CASE NOTES

Notice Requirement. — Buyer of a vehicle seized by the division of motor vehicles was entitled to notice and a hearing as outlined in G.S. 20-108; a trial court's summary judgment dismissing a claim brought by the buyer against the division was error where the record was devoid of evidence that the division gave the buyer notice complying with the requirements of G.S. 20-108(c). Citifinancial, Inc. v. Messer, 167 N.C. App. 742, 606 S.E.2d 453, 2005 N.C. App. LEXIS 4 (2005), cert. denied, 359 N.C. 410, 612 S.E.2d 317 (2005).

§ 20-109. Altering or changing engine or other numbers.

(a) It shall be unlawful and constitute a felony for:

(1) Any person to willfully deface, destroy, remove, cover, or alter the manufacturer's serial number, transmission number, or engine number; or

(2) Any vehicle owner to knowingly permit the defacing, removal, destroying, covering, or alteration of the serial number, transmission number, or engine number; or

(3) Any person except a licensed vehicle manufacturer as authorized by law to place or stamp any serial number, transmission number, or engine number upon a vehicle, other than one assigned thereto by the Division; or

(4) Any vehicle owner to knowingly permit the placing or stamping of any serial number or motor number upon a motor vehicle, except such numbers as assigned thereto by the Division.

A violation of this subsection shall be punishable as a Class I felony.

(b) It shall be unlawful and constitute a felony for:

(1) Any person, with intent to conceal or misrepresent the true identity of the vehicle, to deface, destroy, remove, cover, alter, or use any serial or motor number assigned to a vehicle by the Division; or

(2) Any vehicle owner, with intent to conceal or misrepresent the true identity of the vehicle, to permit the defacing, destruction, removal, covering, alteration, or use of a serial or motor number assigned to a vehicle by the Division; or

(3) Any vehicle owner, with the intent to conceal or misrepresent the true identity of a vehicle, to permit the defacing, destruction, removal, covering, alteration, use, gift, or sale of any manufacturer's serial number, serial number plate, or any part or parts of a vehicle containing the serial number or portions of the serial number.

A violation of this subsection shall be punishable as a Class I felony. (1937, c. 407, s. 73; 1943, c. 726; 1953, c. 216; 1965, c. 621, s. 3; 1967, c. 449; 1973, c. 1089; 1975, c. 716, s. 5; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; ; 1987, c. 512; 1993, c. 539, s. 1255; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — For provision that G.S. 14-160.1, relating to the alteration, destruction or removal of permanent identification marks from personal property, shall not affect this section, see G.S. 14-160.1(d).

CASE NOTES

Assignment of Number by Division as Essential Element of Offense Under Subdivision (b)(1). — The requirement that a serial or motor number alleged to have been altered be one assigned to a vehicle by the Division of Motor Vehicles of the Department of Transportation is an essential element of the offense condemned by subdivision (b)(1) of this section. Before the State is entitled to a conviction, it must prove the presence of this element beyond a reasonable doubt from the evidence. State v. Wyrick, 35 N.C. App. 352, 241 S.E.2d 355 (1978).

§ 20-109.1. Surrender of titles to salvage vehicles.

(a) Option to Keep Title. — When a vehicle is damaged to the extent that it becomes a salvage vehicle and the owner submits a claim for the damages to an insurer, the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. If the owner does not want to keep the vehicle after payment of the claim, the procedures in subsection (b) of this section apply. If the owner wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of this section apply.

(b) Transfer to Insurer. — If a salvage vehicle owner does not want to keep the vehicle, the owner must assign the vehicle's certificate of title to the insurer when the insurer pays the claim. The insurer must send the assigned title to the Division within 10 days after receiving it from the vehicle owner. The Division must then send the insurer a form to use to transfer title to the vehicle from the insurer to a person who buys the vehicle from the insurer. If the insurer sells the vehicle, the insurer must complete the form and give it to the buyer. If the buyer rebuilds the vehicle, the buyer may apply for a new certificate of title to the vehicle.

(c) Owner Keeps Vehicle. — If a salvage vehicle owner wants to keep the vehicle, the insurer must give the owner an owner-retained salvage form. The owner must complete the form and give it to the insurer when the insurer pays the claim. The owner's signature on the owner-retained salvage form must be notarized. The insurer must send the completed form to the Division within 10 days after receiving it from the vehicle owner. The Division must then note in its vehicle registration records that the vehicle listed on the form is a salvage vehicle.

(d) Theft Claim on Salvage Vehicle. — An insurer that pays a theft loss claim on a vehicle and, upon recovery of the vehicle, determines that the vehicle has been damaged to the extent that it is a salvage vehicle must send the vehicle's certificate of title to the Division within 10 days after making the determination. The Division and the insurer must then follow the procedures set in subsection (b) of this section.

(e) Out-of-State Vehicle. — A person who acquires a salvage vehicle that is registered in a state that does not require surrender of the vehicle's certificate of title must send the title to the Division within 10 days after the vehicle enters this State. The Division and the person must then follow the procedures set in subsection (b) of this section.

(f) Sanctions. — Violation of this section is a Class 1 misdemeanor. In addition to this criminal sanction, a person who violates this section is subject to a civil penalty of up to one hundred dollars ($100.00), to be imposed in the discretion of the Commissioner.

(g) Fee. — G.S. 20-85 sets the fee for issuing a salvage certificate of title. (1973, c. 1095, s. 1; 1975, c. 716, s. 5; c. 799; 1983, c. 713, s. 94; 1989, c. 455, s. 5; 1993, c. 539, s. 350; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 50, s. 3; c. 517, s. 33.1.)

CASE NOTES

Intent of Section. — The intent of this section is to see that insurance companies which obtain salvage vehicles as a result of paying a total loss claim, repair them, and then sell them, surrender their evidence of title to the State, so that the reissued certificate of title might reflect that the vehicle has been previously wrecked. Allen v. American Sec. Ins. Co., 53 N.C. App. 239, 280 S.E.2d 471 (1981).

Scope of Section. — This section appears to be directed only toward insurance companies who obtain salvage vehicles as a result of paying a total loss claim, repair them, and then sell them. Allen v. American Sec. Ins. Co., 53 N.C. App. 239, 280 S.E.2d 471 (1981).

Constructive and Actual Total Loss Distinguished. — A vehicle is considered a constructive total loss any time repair becomes economically impractical. Hence, under this definition, a constructive total loss is something quite different from an actual total loss, which is generally defined as occurring when the cost of repairs exceeds the fair market value of the vehicle prior to the collision. Allen v. American Sec. Ins. Co., 53 N.C. App. 239, 280 S.E.2d 471 (1981).

Total loss referred to in this section must be an actual total loss, since only if the insurance company pays the full precollision value of a vehicle can the vehicle's owner be expected to give up his rights in the vehicle, including his right to the proceeds from salvage of the vehicle. Allen v. American Sec. Ins. Co., 53 N.C. App. 239, 280 S.E.2d 471 (1981).

Section Inapplicable Where Constructive Total Loss Claim Paid. — As it is unlikely that the legislature intended to force the owner of a wrecked vehicle to give up title and possession of his vehicle for less than its reasonable precollision value, this section applies only to the payment of an actual total loss claim, and is inapplicable where a substantially lower constructive total loss claim is paid. Allen v. American Sec. Ins. Co., 53 N.C. App. 239, 280 S.E.2d 471 (1981).

Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996).

OPINIONS OF ATTORNEY GENERAL

"Constructive total loss" vehicles as well as "actual total loss" vehicles are within the definition of salvage motor vehicle. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

As to treatment by insurer of wrecked vehicle as a constructive total loss, so as to harmonize G.S. 20-4.01(33)(d) and subdivision (a)(1) of this section, see opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

New definitions of salvage motor vehicle enacted by Session Laws 1987, c. 607 in § 20-4.01(33)(d) and this section must be read in pari materia. See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, 58 N.C.A.G. 38 (May 20, 1988).

§ 20-109.2. Surrender of title to manufactured home.

(a) Surrender of Title. — If a title has been issued for a manufactured home and the manufactured home qualifies as real property as defined in G.S. 105-273(13), the owner shall submit an affidavit to the Division that the manufactured home meets this definition and surrender the certificate of title to the Division.

(b) Affidavit. — The affidavit must be in a form approved by the Commissioner and shall include or provide for all of the following information:

(1) The manufacturer and, if applicable, the model name of the manufactured home.

(2) The vehicle identification number and serial number of the manufactured home.

(3) The legal description of the real property on which the manufactured home is placed, stating that the owner of the manufactured home also owns the real property or that the owner of the manufactured home has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed with a copy of the lease or a memorandum thereof pursuant to G.S. 47-18 attached to the affidavit, if not previously recorded.

(4) A description of any security interests in the manufactured home.

(5) A section for the Division's notation or statement that the title has been surrendered and cancelled by the Division.

(c) Cancellation. — Upon compliance by the owner with the procedure for surrender of title, the Division shall rescind and cancel the certificate of title. If a security interest has been recorded on the certificate of title and not released by the secured party, the Division may not cancel the title without written consent from all secured parties. After canceling the title, the Division shall return the original of the affidavit to the owner, or to the secured party having the first recorded security interest, with the Division's notation or statement that the title has been surrendered and has been cancelled by the Division. The owner or secured party shall file the affidavit returned by the Division with the office of the register of deeds of the county where the real property is located. The Division may charge five dollars ($5.00) for a cancellation of a title under this section.

(d) Application for Title After Cancellation. — If the owner of a manufactured home whose certificate of title has been cancelled under this section subsequently seeks to separate the manufactured home from the real property, the owner may apply for a new certificate of title. The owner must submit to the Division an affidavit containing the same information set out in subsection (b) of this section, verification that the manufactured home has been removed from the real property, and written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed. The Commissioner may require evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent. Upon receipt of this information, together with a title application and required fee, the Division is authorized to issue a new title for the manufactured home.

(e) Sanctions. — Any person who violates this section is subject to a civil penalty of up to one hundred dollars ($100.00), to be imposed in the discretion of the Commissioner. (2001-506, s. 2; 2003-400, s. 1.)

§ 20-110. When registration shall be rescinded.

(a) The Division shall rescind and cancel the registration of any vehicle which the Division shall determine is unsafe or unfit to be operated or is not equipped as required by law.

(b) The Division shall rescind and cancel the registration of any vehicle whenever the person to whom the registration card or registration number plates therefor have been issued shall make or permit to be made any unlawful use of the said card or plates or permit the use thereof by a person not entitled thereto.

(c) Repealed by Session Laws 1993, c. 440, s. 8.

(d) The Division shall rescind and cancel the certificate of title to any vehicle which has been erroneously issued or fraudulently obtained or is unlawfully detained by anyone not entitled to possession.

(e) and (f) Repealed by Session Laws 1993, c. 440, s. 8.

(g) The Division shall rescind and cancel the registration plates issued to a carrier of passengers or property which has been secured by such carrier as provided under G.S. 20-50 when the license is being used on a vehicle other than the one for which it was issued or which is being used by the lessor-owner after the lease with such lessee has been terminated.

(h) The Division may rescind and cancel the registration or certificate of title on any vehicle on the grounds that the application therefor contains any false or fraudulent statement or that the holder of the certificate was not entitled to the issuance of a certificate of title or registration.

(i) The Division may rescind and cancel the registration or certificate of title of any vehicle when the Division has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of certificate of title constituted a fraud against the rightful owner or person having a valid lien upon such vehicle.

(j) The Division may rescind and cancel the registration or certificate of title of any vehicle on the grounds that the registration of the vehicle stands suspended or revoked under the motor vehicle laws of this State.

(k) The Division shall rescind and cancel a certificate of title when the Division finds that such certificate has been used in connection with the registration or sale of a vehicle other than the vehicle for which the certificate was issued.

(*l*) The Division may rescind and cancel the registration and certificate of title of a vehicle when presented with evidence, such as a sworn statement, that the vehicle has been transferred to a person who has failed to get a new certificate of title for the vehicle as required by G.S. 20-73. A person may submit evidence to the Division by mail.

(m) The Division shall rescind and cancel the registration of vehicles of a motor carrier that is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1). (1937, c. 407, s. 74; 1945, c. 576, s. 5;

1947, c. 220, s. 4; 1951, c. 985, s. 1; 1953, c. 831, s. 4; 1955, c. 294, s. 1; c. 554, s. 11; 1975, c. 716, s. 5; 1981, c. 976, s. 11; 1991, c. 183, s. 1; 1993, c. 440, s. 8; 2002-152, s. 2.)

Editor's Note. — Session Laws 2002-152, s. 6, provides: "The Division shall adopt rules to implement the provisions of this act."

§ 20-111. Violation of registration provisions.

It shall be unlawful for any person to commit any of the following acts:

(1) To drive a vehicle on a highway, or knowingly permit a vehicle owned by that person to be driven on a highway, when the vehicle is not registered with the Division in accordance with this Article or does not display a current registration plate.

(2) To display or cause or permit to be displayed or to have in possession any registration card, certificate of title or registration number plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered, or to willfully display an expired license or registration plate on a vehicle knowing the same to be expired.

(3) The giving, lending, or borrowing of a license plate for the purpose of using same on some motor vehicle other than that for which issued shall make the giver, lender, or borrower guilty of a Class 3 misdemeanor. Where license plate is found being improperly used, such plate or plates shall be revoked or canceled, and new license plates must be purchased before further operation of the motor vehicle.

(4) To fail or refuse to surrender to the Division, upon demand, any title certificate, registration card or registration number plate which has been suspended, canceled or revoked as in this Article provided. Service of the demand shall be in accordance with G.S. 20-48.

(5) To use a false or fictitious name or address in any application for the registration of any vehicle or for a certificate of title or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application. A violation of this subdivision shall constitute a Class 1 misdemeanor.

(6) To give, lend, sell or obtain a certificate of title for the purpose of such certificate being used for any purpose other than the registration, sale, or other use in connection with the vehicle for which the certificate was issued. Any person violating the provisions of this subdivision shall be guilty of a Class 2 misdemeanor. (1937, c. 407, s. 75; 1943, c. 592, s. 2; 1945, c. 576, s. 6; c. 635; 1949, c. 360; 1955, c. 294, s. 2; 1961, c. 360, s. 20; 1975, c. 716, s. 5; 1981, c. 938, s. 3; 1993, c. 440, s. 9; c. 539, ss. 351-353; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1989, c. 168, ss. 3 and 4, effective May 30, 1989, would have amended subdivisions (c)(9) and (c)(10) of this section; however, these subdivisions do not exist in this section. The amendment apparently should have been to G.S. 20-118.

CASE NOTES

Probable Cause for Arrest. — Civil claims against an inspector with the North Carolina Division of Motor Vehicles were properly dismissed upon summary judgment on the basis of sovereign and qualified immunity, where plaintiff's arrest was supported by probable cause; the inspector had firsthand knowledge that plaintiff's vehicle was not registered to plaintiff and that plaintiff was attempting to operate an unregistered vehicle on a highway while possessing a canceled/revoked registration card. Ellis v. White, 156 N.C. App. 16, 575 S.E.2d

809, 2003 N.C. App. LEXIS 34 (2003).

The maximum punishment for a violation of this section or G.S. 20-63 would be that prescribed by G.S. 20-176(b), namely, a fine of not more than $100.00 or imprisonment in the county or municipal jail for not more than 60 days, or both such fine and imprisonment. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Applied in State v. Green, 266 N.C. 785, 147 S.E.2d 377 (1966); State v. Gray, 55 N.C. App. 568, 286 S.E.2d 357 (1982); State v. Harrell, 96 N.C. App. 426, 386 S.E.2d 103 (1989).

Cited in State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968); State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984); State v. Green, 103 N.C. App. 38, 404 S.E.2d 363 (1991); State v. Washington, — N.C. App. —, 668 S.E.2d 622, 2008 N.C. App. LEXIS 2019 (2008).

§ 20-112. Making false affidavit perjury.

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed to shall be guilty of a Class I felony. (1937, c. 407, s. 76; 1993, c. 539, s. 1256; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to revocation of license in the event of conviction of perjury or the making of false affidavits, etc., see G.S. 20-17.

§ 20-113: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 13.

§ 20-114. Duty of officers; manner of enforcement.

(a) For the purpose of enforcing the provisions of this Article, it is hereby made the duty of every police officer of any incorporated city or village, and every sheriff, deputy sheriff, and all other lawful officers of any county to arrest within the limits of their jurisdiction any person known personally to any such officer, or upon the sworn information of a creditable witness, to have violated any of the provisions of this Article, and to immediately bring such offender before any magistrate or officer having jurisdiction, and any such person so arrested shall have the right of immediate trial, and all other rights given to any person arrested for having committed a misdemeanor. Every officer herein named who shall neglect or refuse to carry out the duties imposed by this Chapter shall be liable on his official bond for such neglect or refusal as provided by law in like cases.

(b) It shall be the duty of all sheriffs, police officers, deputy sheriffs, deputy police officers, and all other officers within the State to cooperate with and render all assistance in their power to the officers herein provided for, and nothing in this Article shall be construed as relieving said sheriffs, police officers, deputy sheriffs, deputy police officers, and other officers of the duties imposed on them by this Chapter.

(c) It shall also be the duty of every law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to the officer as abandoned or that are seized by the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale. (1937, c. 407, s. 78; 1943, c. 726; 1967, c. 862; 1971, c. 528, s. 13; 1981, c. 412, s. 4; c. 747, s. 66; 1998-182, s. 12.)

CASE NOTES

Cited in Shay v. Nixon, 45 N.C. App. 108, 262 S.E.2d 294 (1980).

§ 20-114.1. Willful failure to obey law-enforcement or traffic-control officer; firemen as traffic-control officers; appointment, etc., of traffic-control officers.

(a) No person shall willfully fail or refuse to comply with any lawful order or direction of any law-enforcement officer or traffic-control officer invested by law with authority to direct, control or regulate traffic, which order or direction related to the control of traffic.

(b) In addition to other law enforcement or traffic control officers, uniformed regular and volunteer firemen and uniformed regular and volunteer members of a rescue squad may direct traffic and enforce traffic laws and ordinances at the scene of or in connection with fires, accidents, or other hazards in connection with their duties as firemen or rescue squad members. Except as herein provided, firemen and members of rescue squads shall not be considered law enforcement or traffic control officers.

(b1) Any member of a rural volunteer fire department or volunteer rescue squad who receives no compensation for services shall not be liable in civil damages for any acts or omissions relating to the direction of traffic or enforcement of traffic laws or ordinances at the scene of or in connection with a fire, accident, or other hazard unless such acts or omissions amount to gross negligence, wanton conduct, or intentional wrongdoing.

(c) The chief of police of a local or county police department or the sheriff of any county is authorized to appoint traffic-control officers, who shall have attained the age of 18 years and who are hereby authorized to direct, control, or regulate traffic within their respective jurisdictions at times and places specifically designated in writing by the police chief or the sheriff. A traffic-control officer, when exercising this authority, must be attired in a distinguishing uniform or jacket indicating that he is a traffic-control officer and must possess a valid authorization card issued by the police chief or sheriff who appointed him. Unless an earlier expiration date is specified, an authorization card shall expire two years from the date of its issuance. In order to be appointed as a traffic-control officer, a person shall have received at least three hours of training in directing, controlling, or regulating traffic under the supervision of a law-enforcement officer. A traffic-control officer shall be subject to the rules and regulations of the respective local or county police department or sheriff's office as well as the lawful command of any other law-enforcement officer. The appointing police chief or sheriff shall have the right to revoke the appointment of any traffic-control officer at any time with or without cause. The appointing police chief or sheriff shall not be held liable for any act or omission of a traffic-control officer. A traffic-control officer shall not be deemed to be an agent or employee of the respective local or county police department or of the sheriff's office, nor shall he be considered a law-enforcement officer except as provided herein. A traffic-control officer shall not have nor shall he exercise the power of arrest.

(d) No police chief or sheriff who is authorized to appoint traffic-control officers under subsection (c) of this section shall appoint any person to direct, control, or regulate traffic unless there is indemnity against liability of the traffic-control officer for wrongful death, bodily injury, or property damage that is proximately caused by the negligence of the traffic-control officer while acting within the scope of his duties as a traffic-control officer. Such indemnity shall provide a minimum of twenty-five thousand dollars ($25,000) for the death of or bodily injury to one person in any one accident, fifty thousand dollars ($50,000) for the death of or bodily injury to two or more persons in any one accident, and ten thousand dollars ($10,000) for injury to or destruction of property of others in any one accident. (1961, c. 879; 1969, c. 59; 1983, c. 483, ss. 1-3; 1987, c. 146, ss. 1, 3.)

Editor's Note. — Session Laws 1985, c. 591, repealed Session Laws 1983, c. 483, s. 4, which had exempted certain counties and municipalities from the provisions of the 1983 Act.

CASE NOTES

No Probable Cause for Arrest. — The defendant police officer who stated that the plaintiff bus driver was under arrest for violating G.S. 20-90(11) (now repealed) could later justify that arrest by reference to G.S. 20-114.1 because the offenses were sufficiently related; nevertheless, summary judgment was still not proper where he may have lacked probable cause to arrest her, even under this section; the facts tended to show that plaintiff was approached by an "angry," "out of control" man wearing shorts, a plain t-shirt, and boots who "flashed something" at her "quickly;" asserted he was both a truck driver and a police officer; boarded her bus; ordered her to move her bus; grabbed her arm, unfastened her seatbelt, and told her she was under arrest; then exited her bus without writing her a citation or formally taking her into custody; furthermore, at no point did plaintiff acknowledge his status as a police officer nor was she even looking in his direction when he attempted to show her his badge at the window of the bus. Glenn-Robinson v. Acker, 140 N.C. App. 606, 538 S.E.2d 601, 2000 N.C. App. LEXIS 1258 (2000).

Cited in Bland v. City of Wilmington, 278 N.C. 657, 180 S.E.2d 813 (1971); Warren v. Parks, 31 N.C. App. 609, 230 S.E.2d 684 (1976).

§ 20-114.3: Repealed by Session Laws 2007-433, s. 3(a), (b), effective October 1, 2007.

Cross References. — For present similar provisions concerning use of all-terrain vehicles on certain highways by law-enforcement officers, fire, rescue, and emergency services personnel, and employees of certain municipalities, see G.S. 20-171.23 and 20-171.24.

Editor's Note. — Session Laws 2007-4, s. 1, effective March 26, 2007, amended subsection (c) by inserting the towns of Atlantic Beach, Burgaw, Carolina Beach, Emerald Isle, Indian Beach, Kure Beach, Oakboro, North Topsail Beach, Pine Knoll Shores, and Topsail Beach, and the cities of Albemarle and Rockingham, and rearranging the town of Stanley to fall in alphabetical order. However, since Session Laws 2007-433, s. 3(a), (b), repealed this section effective October 1, 2007, the amendment by 2007-4, s. 1, has not been given effect.

As amended, Session Laws 2004-108, s. 2, applied to 10 or more jurisdictions and was codified as this section at the direction of the Revisor of Statutes.

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-115. Scope and effect of regulations in this title.

It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the Department of Transportation adopted pursuant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this Article. (1937, c. 407, s. 79; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 8.)

Legal Periodicals. — Legal Periodicals. - See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

CASE NOTES

Civil Actions Based on Alleged Violation. — Trial court properly dismissed an injured party's claim against a church and a landowner, alleging that the church and the landowner where negligent because they allowed children younger than 12 years old to ride on an open flatbed trailer during a church festival in violation of G.S. 20-135.2B, because the festival occurred on private property and G.S. 20-135.2B did not apply to activities that occurred on private property. Clontz v. St. Mark's Evangelical Lutheran Church, 157 N.C. App. 325, 578 S.E.2d 654, 2003 N.C. App. LEXIS 537 (2003), cert. denied, 357 N.C. 249, 582 S.E.2d 29 (2003).

§ 20-115.1. Limitations on tandem trailers and semitrailers on certain North Carolina highways.

(a) Motor vehicle combinations consisting of a truck tractor and two trailing units may be operated in North Carolina only on highways of the interstate system (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i)) and on those sections of the federal-aid primary system designated by the United States Secretary of Transportation. No trailer or semitrailer operated in this combination shall exceed 28 feet in length; Provided, however, a 1982 or older year model trailer or semitrailer of up to 28 1/2 feet in length may operate in a combination permitted by this section for trailers or semitrailers which are 28 feet in length.

(b) Motor vehicle combinations consisting of a semitrailer of not more than 53 feet in length and a truck tractor may be operated on all primary highway routes of North Carolina provided the motor vehicle combination meets the requirements of this subsection. The Department may, at any time, prohibit motor vehicle combinations on portions of any route on the State highway system. If the Department prohibits a motor vehicle combination on any route, it shall submit a written report to the Joint Legislative Transportation Oversight Committee within six months of the prohibition clearly documenting through traffic engineering studies that the operation of a motor vehicle combination on that route cannot be safely accommodated and that the route does not have sufficient capacity to handle the vehicle combination. To operate on a primary highway route, a motor vehicle combination described in this subsection must meet all of the following requirements:

(1) The motor vehicle combination must comply with the weight requirements in G.S. 20-118.

(2) A semitrailer in excess of 48 feet in length must meet one or more of the following conditions:

  (a) The distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 41 feet.

  (b) The semitrailer is used exclusively or primarily to transport vehicles in connection with motorsports competition events, and the distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 46 feet.

(3) A semitrailer in excess of 48 feet must be equipped with a rear underride guard of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 30 inches from the surface as measured with the vehicle empty and on a level surface.

(c) Motor vehicles with a width not exceeding 102 inches may be operated on the interstate highways (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2316(e)) and other qualifying federal-aid highways designated by the United States Secretary of Transportation, with traffic lanes designed to be a width of 12 feet or more and any other qualifying federal-aid primary system highway designated by the United States Secretary of Transportation if the Secretary has determined that the designation is consistent with highway safety.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section which limit the length of trailers which may be used in motor vehicle combinations in this State on highways of the interstate system (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i)) and on those sections of the federal-aid primary system designated by the United States Secretary of Transportation, there is no limitation of the length of the truck tractor which may be used in motor vehicle combinations on these highways and therefore, in compliance with Section 411(b) of the Surface Transportation Act of 1982, there is no overall length limitation for motor vehicle combinations regulated by this section.

(e) The length and width limitations in this section are subject to exceptions and exclusions for safety devices and specialized equipment as provided for in 49 USC 2311(d)(h) and Section 416 of the Surface Transportation Act of 1982 as amended (49 USC 2316).

(f) Motor vehicle combinations operating pursuant to this section shall have reasonable access between (i) highways on the interstate system (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i) and 49 USC 2316(e)) and other qualifying federal-aid highways as designated by the United States Secretary of Transportation and (ii) terminals, facilities for food, fuel, repairs, and rest and points of loading and unloading by household goods carriers and by any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 1/2 feet and a width not to exceed 102 inches as provided in subsection (c) of this section and which generally operates as part of a vehicle combination described in subsection (a) of this section. The North Carolina Department of Transportation may, on streets and highways on the State highway system, and any municipality may, on streets and highways on the municipal street system, impose reasonable restrictions based on safety considerations on any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 1/2 feet and which generally operates as part of a vehicle combination described in subsection (a) of this section. “Reasonable access” to facilities for food, fuel, repairs and rest shall be deemed to be those facilities which are located within three road miles of the interstate or designated highway. The Department of Transportation is authorized to promulgate rules and regulations providing for “reasonable access.” The Department may approve reasonable access routes for one particular type of STAA (Surface Transportation Assistance Act) dimensioned vehicle when significant, substantial differences in their operating characteristics exist.

(g) Under certain conditions, and after consultation with the Joint Legislative Commission on Governmental Operations, the North Carolina Department of Transportation may designate State highway system roads in addition to those highways designated by the United States Secretary of Transportation for use by the vehicle combinations authorized in this section. Such designations by the Department shall only be made under the following conditions:

(1) A determination of the public convenience and need for such designation;
(2) A traffic engineering study which clearly shows the road proposed to be designated can safely accommodate and has sufficient capacity to handle these vehicle combinations; and

(3) A public hearing is held or the opportunity for a public hearing is provided in each county through which the designated highway passes, after two weeks notice posted at the courthouse and published in a newspaper of general circulation in each county through which the designated State highway system road passes, and consideration is given to the comments received prior to the designation.

(4) The Department may designate routes for one particular type of STAA (Surface Transportation Assistance Act) dimensioned vehicle when significant, substantial differences in their operating characteristics exist.

The Department may not designate any portion of the State highway system that has been deleted or exempted by the United States Secretary of Transportation based on safety considerations. For the purpose of this section, any highway designated by the Department shall be deemed to be the same as a federal-aid primary highway designated by the United States Secretary of Transportation pursuant to 49 USC 2311 and 49 USC 2316, and the vehicle combinations authorized in this section shall be permitted to operate on such highway.

(h) Any owner of a semitrailer less than 50 feet in length in violation of subsections (a) or (b) is responsible for an infraction and is subject to a penalty of one hundred dollars ($100.00). Any owner of a semitrailer 50 feet or greater in length in violation of subsection (b) is responsible for an infraction and subject to a penalty of two hundred dollars ($200.00).

(i) Any driver of a vehicle with a semitrailer less than 50 feet in length violating subsections (a) or (b) of this section is guilty of a Class 3 misdemeanor punishable only by a fine of one hundred dollars ($100.00). Any driver of a vehicle with a semitrailer 50 feet or more in length violating subsection (b) of this section is guilty of a Class 3 misdemeanor punishable only by a fine of two hundred dollars ($200.00).

(j) Notwithstanding any other provision of this section, a manufacturer of trailer frames, with a permit issued pursuant to G.S. 20-119, is authorized to transport the trailer frame to another location within three miles of the first place of manufacture to the location of completion on any public street or highway if the width of the trailer frame does not exceed 14 feet and oversize markings and safety flags are used during transport. Trailer frames transported pursuant to this subsection shall not exceed 7,000 pounds, and the vehicle towing the trailer frame shall have a towing capacity greater than 10,000 pounds and necessary towing equipment. The transport of trailer frames under this subsection shall only be done during daylight hours. (1983, c. 898, s. 1; 1985, c. 423, ss. 1-7; 1989, c. 790, ss. 1, 3, 3.1; 1993, c. 533, s. 10; c. 539, s. 354; 1994, Ex. Sess., c. 24, s. 14(c); 1998-149, s. 6; 2007-77, ss. 2, 3; 2008-160, s. 1; 2008-221, ss. 3, 4.)

Effect of Amendments. — Session Laws 2008-160, s. 1, effective August 3, 2008, added subsection (j).

Session Laws 2008-221, ss. 3 and 4, effective September 1, 2008, rewrote subsection (b); and deleted the first sentence in the concluding paragraph of subsection (g) regarding designating portions of highway within municipal corporate limits and made related changes.

OPINIONS OF ATTORNEY GENERAL

Use of Shortcut Route by Twin Trailers. — The Department of Transportation may not by regulation designate or authorize the use of a shortcut route between routes on the National Twin Trailer Network, as an access route for use by twin trailers. See opinion of Attorney General to Mr. James E. Harrington, Secretary of Transportation, 58 N.C.A.G. 8 (Jan. 4, 1988).

Twin trailers are not authorized to use shortcuts between routes on the National Twin Trailer System routes on which a terminal is not located. See opinion of Attorney General to

Mr. James E. Harrington, Secretary of Transportation, 58 N.C.A.G. 8 (Jan. 4, 1988).

§ 20-116. Size of vehicles and loads.

(a) The total outside width of any vehicle or the load thereon shall not exceed 102 inches, except as otherwise provided in this section. When hogsheads of tobacco are being transported, a tolerance of six inches is allowed. When sheet or bale tobacco is being transported the load must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. Vehicles (other than passenger buses) that do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g).

(b) No passenger-type vehicle or recreational vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(c) No vehicle, unladen or with load, shall exceed a height of 13 feet, six inches. Provided, however, that neither the State of North Carolina nor any agency or subdivision thereof, nor any person, firm or corporation, shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of 12 feet, six inches. Provided further, that the operator or owner of any vehicle having an overall height, whether unladen or with load, in excess of 12 feet, six inches, shall be liable for damage to any structure caused by such vehicle having a height in excess of 12 feet, six inches.

(d) Maximum Length. — The following maximum lengths apply to vehicles. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(1) Except as otherwise provided in this subsection, a single vehicle having two or more axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.

(2) Trucks transporting unprocessed cotton from farm to gin, or unprocessed sage from farm to market shall not exceed 50 feet in length overall of dimensions inclusive of front and rear bumpers.

(3) Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors.

(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Motor vehicle combinations of one semitrailer of not more than 53 feet in length and a truck tractor (power unit) may exceed the 60-foot maximum length. Said maximum overall length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, provided the trailer length does not exceed 53 feet in length, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers may tow a truck, combination tractor and trailer,

trailer, or any other disabled vehicle or combination of vehicles to a place for repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety.

(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the foremost part of the vehicle. Under this subsection "load" shall include the boom on a self-propelled vehicle.

A utility pole carried by a self-propelled pole carrier may extend beyond the front overhang limit set in this subsection if the pole cannot be dismembered, the pole is less than 80 feet in length and does not extend more than 10 feet beyond the front bumper of the vehicle, and either of the following circumstances apply:

(1) It is daytime and the front of the extending load of poles is marked by a flag of the type required by G.S. 20-117 for certain rear overhangs.

(2) It is nighttime, operation of the vehicle is required to make emergency repairs to utility service, and the front of the extending load of poles is marked by a light of the type required by G.S. 20-117 for certain rear overhangs.

As used in this subsection, a "self-propelled pole carrier" is a vehicle designed to carry a pole on the side of the vehicle at a height of at least five feet when measured from the bottom of the brace used to carry the pole. A self-propelled pole carrier may not tow another vehicle when carrying a pole that extends beyond the front overhang limit set in this subsection.

(g)(1) No vehicle shall be driven or moved on any highway unless the vehicle is constructed and loaded to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping therefrom, and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled, dumped, or spread on a roadway in cleaning or maintaining the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) A truck, trailer, or other vehicle licensed for more than 7,500 pounds gross vehicle weight that is loaded with rock, gravel, stone, or any other similar substance, other than sand, that could fall, blow, leak, sift, or drop shall not be driven or moved on any highway unless:

a. The height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point; and

b. The load is securely covered by tarpaulin or some other suitable covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(3) A truck, trailer, or other vehicle:

a. Licensed for any gross vehicle weight and loaded with sand; or
b. Licensed for 7,500 pounds or less gross vehicle weight and loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, sift, or drop;

shall not be driven or moved on any highway unless:

a. The height of the load against all four walls does not extend above a horizontal line six inches below the top when loaded at the loading point;
b. The load is securely covered by tarpaulin or some other suitable covering; or
c. The vehicle is constructed to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(4) This section shall not be applicable to or in any manner restrict the transportation of seed cotton, poultry or livestock, or silage or other feed grain used in the feeding of poultry or livestock.

(h) Whenever there exist two highways of the State highway system of approximately the same distance between two or more points, the Department of Transportation may, when in the opinion of the Department of Transportation, based upon engineering and traffic investigation, safety will be promoted or the public interest will be served, designate one of the highways the "truck route" between those points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways selected for heavy vehicle traffic shall be designated as "truck routes" by signs conspicuously posted, and the highways upon which heavy vehicle traffic is prohibited shall likewise be designated by signs conspicuously posted showing the maximum gross vehicle weight or axle load limits authorized for those highways. The operation of any vehicle whose gross vehicle weight or axle load exceeds the maximum limits shown on signs over the posted highway shall constitute a Class 2 misdemeanor: Provided, that nothing in this subsection shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for those highways from using them when its destination is located solely upon that highway, road or street: Provided, further, that nothing in this subsection shall prohibit passenger vehicles or other light vehicles from using any highways designated for heavy truck traffic.

(i) Repealed by Session Laws 1973, c. 1330, s. 39.

(j) Nothing in this section shall be construed to prevent the operation of self-propelled grain combines or other self-propelled farm equipment with or without implements, not exceeding 25 feet in width on any highway, except a highway or section of highway that is a fully controlled access highway or is a part of the National System of Interstate and Defense Highways. Farm equipment includes a vehicle that is designed exclusively to transport compressed seed cotton from a farm to a gin and has a self-loading bed. Combines or equipment which exceed 10 feet in width may be operated only if they meet all of the conditions listed in this subsection. A violation of one or more of these conditions does not constitute negligence per se.

(1) The equipment may only be operated during daylight hours.

(2) The equipment must display a red flag on front and rear ends. The flags shall not be smaller than three feet wide and four feet long. The flags shall be attached to a stick, pole, staff, etc., not less than four feet long and they shall be attached to the equipment as to be visible from both directions at all times while being operated on the public highway for not less than 300 feet.

(3) Equipment covered by this section, which by necessity must travel more than 10 miles or where by nature of the terrain or obstacles the

flags referred to in subdivision (2) of this subsection are not visible from both directions for 300 feet at any point along the proposed route, must be preceded at a distance of 300 feet and followed at a distance of 300 feet by a flagman in a vehicle having mounted thereon an appropriate warning light or flag. No flagman in a vehicle shall be required pursuant to this subdivision if the equipment is being moved under its own power or on a trailer from any field to another field, or from the normal place of storage of the vehicle to any field, for no more than ten miles and if visible from both directions for 300 feet at any point along the proposed route.

(4) Every piece of equipment so operated shall operate to the right of the center line when meeting traffic coming from the opposite direction and at all other times when possible and practical.

(5) Repealed by Session Laws 2008-221, s. 6, effective September 1, 2008.

(6) When the equipment is causing a delay in traffic, the operator of the equipment shall move the equipment off the paved portion of the highway at the nearest practical location until the vehicles following the equipment have passed.

(7) The equipment shall be operated in the designed transport position that minimizes equipment width. No removal of equipment or appurtenances is required under this subdivision.

(k) Nothing in this section shall be construed to prevent the operation of passenger buses having an overall width of 102 inches, exclusive of safety equipment, upon the highways of this State which are 20 feet or wider and that are designated as the State primary system, or as municipal streets, when, and not until, the federal law and regulations thereunder permit the operation of passenger buses having a width of 102 inches or wider on the National System of Interstate and Defense Highways.

(*l*) Nothing in this section shall be construed to prevent the operation of passenger buses that are owned and operated by units of local government, operated as a single vehicle only and having an overall length of 45 feet or less, on public streets or highways. The Department of Transportation may prevent the operation of buses that are authorized under this subsection if the operation of such buses on a street or highway presents a hazard to passengers of the buses or to the motoring public.

(m) Notwithstanding subsection (a) of this section, a boat or boat trailer with an outside width of less than 120 inches may be towed without a permit. The towing of a boat or boat trailer 102 inches to 114 inches in width may take place on any day of the week, including weekends and holidays, and may take place at night. The towing of a boat or boat trailer 114 inches to 120 inches in width may take place on any day of the week, including weekends and holidays from sun up to sun down. A boat or boat trailer in excess of 102 inches but less than 120 inches must be equipped with a minimum of two operable amber lamps on the widest point of the boat and the boat trailer such that the dimensions of the boat and the boat trailer are clearly marked and visible.

(n) Vehicle combinations used in connection with motorsports competition events that include a cab or other motorized vehicle unit with living quarters, and an attached enclosed specialty trailer, the combination of which does not exceed 90 feet in length, may be operated on the highways of this State, provided that such operation takes place for one or more of the following purposes:

(1) Driving to or from a motorsports competition event.

(2) For trips conducted for the purpose of purchasing fuel or conducting repairs or other maintenance on the competition vehicle.

(3) For other activities related to motorsports purposes, including, but not limited to, performance testing of the competition vehicle.

The Department of Transportation may prohibit combinations authorized by this subsection from specific routes, pursuant to G.S. 20-115.1(b). (1937, c. 246; c. 407, s. 80; 1943, c. 213, s. 1; 1945, c. 242, s. 1; 1947, c. 844; 1951, c. 495, s. 1; c. 733; 1953, cc. 682, 1107; 1955, c. 296, s. 2; c. 729; 1957, c. 65, s. 11; cc. 493, 1183, 1190; 1959, c. 559; 1963, c. 356, s. 1; c. 610, ss. 1, 2; c. 702, s. 4; c. 1027, s. 1; 1965, c. 471; 1967, c. 24, s. 4; c. 710; 1969, cc. 128, 880; 1971, cc. 128, 680, 688, 1079; 1973, c. 507, s. 5; c. 546; c. 1330, s. 39; 1975, c. 148, ss. 1-5; c. 716, s. 5; 1977, c. 464, s. 34; 1979, cc. 21, 218; 1981, c. 169, s. 1; 1983, c. 724, s. 2; 1985, c. 587; 1987, c. 272; 1989, c. 277, s. 1; c. 790, s. 2; 1991, c. 112, s. 1; c. 449, ss. 1, 2.1; 1993, c. 539, s. 355; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 573, s. 1; c. 756, s. 14; 1998-149, s. 7; 1999-438, s. 28; 2000-185, s. 2; 2001-341, ss. 3, 4; 2001-512, s. 2; 2002-72, s. 19(c); 2002-159, s. 31.5(b); 2002-190, s. 2; 2003-383, s. 8; 2005-248, s. 2; 2007-77, s. 1; 2007-194, ss. 2, 3; 2007-484, s. 5; 2007-499, s. 1; 2008-221, ss. 5, 6; 2008-229, s. 1; 2009-7, s. 1; 2009-127, s. 1; 2009-128, s. 1.)

Local Modification. — Dare: 1985 (Reg. Sess., 1986), c. 964; city of Charlotte: 1955, c. 317.

Editor's Note. — Session Laws 2001-512, s. 15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Session Laws 2008-229 was House Bill 2167, which was vetoed by the Governor on August 17, 2008. The General Assembly, in a special session on August 27, 2008, voted to override the Governor's veto. Session Laws 2008-229 became law notwithstanding the Governor's veto on August 27, 2008.

Effect of Amendments. — Session Laws 2008-221, ss. 5 and 6, effective September 1, 2008, in subsection (e), substituted "53 feet" for "48 feet" in the second sentence; and rewrote subsection (j).

Session Laws 2008-229, s. 1, effective August 27, 2008, added subsection (m).

Session Laws 2009-7, s. 1, effective March 6, 2009, added subsection (n).

Session Laws 2009-127, s. 1, effective June 19, 2009, inserted "or unprocessed sage from farm to market" in subdivision (d)(2).

Session Laws 2009-128, s. 1, effective December 1, 2009, and applicable to offenses committed on or after that date, in subdivision (d)(1), substituted "two or more" for "two or three"; in subsection (e), in the third sentence, inserted "maximum overall" near the beginning, and "provided, the trailer length does not exceed 53 feet in length" near the middle, and deleted the former fifth sentence, which read: "Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers."; and in subsection (j), substituted "self-propelled farm equipment with or without implements" for "farm equipment self-propelled, pulled, or otherwise" in the first sentence.

CASE NOTES

Vehicles transporting poles in the daytime are exempt from the requirements of subsection (e) of this section, and therefore during the daytime it is not negligence per se to transport without a special permit a 40-foot pole on a trailer. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Evidence Held Insufficient to Sustain Violation of Subsection (j). — Defendant's contention that plaintiff violated subsection (j) of this section, which constitutes negligence per se, was untenable where there was no evidence in the record that plaintiff's combine exceeded 10 feet in width so as to bring the case within the purview of subsection (j), plaintiff's evidence, taken in the light most favorable to him, showing that the combine was nine feet 11 inches in width while being moved upon the road and defendant's evidence tending only to show the width of the combine when in actual operation and not when being moved along the highway. Furr v. Overcash, 254 N.C. 611, 119 S.E.2d 465 (1961).

Section Not Conclusive on Contributory Negligence of Passenger. — This section, prohibiting the extension of any part of the load of a passenger vehicle beyond the line of the fenders on the left side of such vehicle, imposes a duty for the safety of other vehicles on the highway, and is not conclusive on the question of contributory negligence of a passenger riding on the running board, with none of his body extending beyond the line of the fenders, who is injured by the negligent operation of another vehicle. Roberson v. Carolina Taxi Serv., 214 N.C. 624, 200 S.E. 363 (1939).

Driver Not Contributorily Negligent Where No Warning Signs. — North Carolina Department of Transportation was liable under the Tort Claims Act, G.S. 143-291 et seq., for failing to post adequate signage at a railroad crossing that was difficult to cross for low vehicles due to the grade of the road where the Department had a duty to put up signs to warn of the risk, pursuant to G.S. 136-18(5), and it instead chose to direct trucks on an alternate route after finding that signs often went unheeded; the failure to post such warnings was a breach of its duty and was the proximate cause of a truck driver's tractor-trailer getting stuck on the crossing and thereafter hit by a train, and there was no contributory negligence by the truck driver who bypassed the alternate route because there were no warning signs or weight limit signs posted pursuant to G.S. 20-116(h). Smith v. N.C. DOT, 156 N.C. App. 92, 576 S.E.2d 345, 2003 N.C. App. LEXIS 83 (2003).

As to height of vehicle, Dennis v. City of Albemarle, 242 N.C. 263, 87 S.E.2d 561, appeal dismissed, 243 N.C. 221, 90 S.E.2d 532 (1955).

Applied in Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

Cited in Hobbs v. Drewer, 226 N.C. 146, 37 S.E.2d 121 (1946); Lyday v. Southern Ry., 253 N.C. 687, 117 S.E.2d 778 (1961); State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965); Reynolds v. United States, 805 F. Supp. 336 (W.D.N.C. 1992).

OPINIONS OF ATTORNEY GENERAL

Subsection (g) Does Not Require the Peak of a Load on a Truck, Trailer or Other Vehicle to Be Six Inches Below a Horizontal Line Six Inches Below the Top of All Four Sidewalls. — See opinion of Attorney General to Colonel Edwin C. Guy, North Carolina State Highway Patrol, 41 N.C.A.G. 708 (1972).

Proviso to Subsection (g) Does Not Apply to Transportation of Empty, Unloaded Poultry Containers. — See opinion of Attorney General to Mr. Broxie Nelson, Raleigh City Attorney, 43 N.C.A.G. 340 (1974).

Subsection (g) applies to a basically unloaded truck that is depositing material on the road. — See opinion of Attorney General to Mr. Randy Jones, Department of Natural Resources & Community Development, Oct. 3, 1979.

Twin trailers are not authorized to use shortcuts between routes on the National Twin Trailer System routes on which a terminal is not located. See opinion of Attorney General to Mr. James E. Harrington, Secretary of Transportation, 58 N.C.A.G. 8 (Jan. 4, 1988).

§ 20-117. Flag or light at end of load.

(a) General Provisions. — Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 18 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles.

(b) Commercial Motor Vehicles. — A commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or more that is engaged in commerce, that is being used to tow a load or that has a load that protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. Part 393. (1937, c. 407, s. 81; 1985, c. 455; 1997-178, s. 1; 2005-361, s. 2; 2009-376, s. 4.)

Effect of Amendments. — Session Laws 2009-376, s. 4, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, designated the previously existing provisions as subsection (a); in subsection (a), added the subsection heading, and substituted "18 inches" for "12 inches" in the first sentence; and added subsection (b).

CASE NOTES

Purpose of Section. — The obvious purpose of this section is to promote the safety of one following a loaded vehicle upon the highway. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

The clear meaning of this section is that during daylight hours a red flag shall be displayed from the end of the projecting load so that there shall be visible to a user of the highway following the vehicle at least 12 inches of the flag's length and 12 inches of the flag's width. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

The requirement of this section is not met by draping a red flag over the top of the load so that only a fringe of it is visible to one following the vehicle upon the highway. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Violation of Section as Negligence. — Violation of this section during the daylight hours, by failure to comply with its requirements applicable to such time, is negligence. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Violation of this section by failure to display at night a light, such as is required hereby, is negligence. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Failure of defendant to display a red light at the end of lumber which extended more than four feet beyond the rear of the bed or body of the truck, plainly visible under normal atmospheric conditions at least 200 feet from the rear of the truck, between one-half hour after sunset and one-half hour before sunrise, as required by this section, was negligence. Weavil v. Myers, 243 N.C. 386, 90 S.E.2d 733 (1956).

As to former law, see Williams v. Frederickson Motor Express Lines, 198 N.C. 193, 151 S.E. 197 (1930).

Applied in Bumgardner v. Allison, 238 N.C. 621, 78 S.E.2d 752 (1953).

Cited in C. C. T. Equip. Co. v. Hertz Corp., 256 N.C. 277, 123 S.E.2d 802 (1962).

§ 20-117.1. Requirements for mirrors and fuel container.

(a) Rear-Vision Mirrors. — Every bus, truck, and truck tractor with a GVWR of 10,001 pounds or more shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and located as to reflect to the driver a view of the highway to the rear and along both sides of the vehicle. Only one outside mirror shall be required, on the driver's side, on trucks which are so constructed that the driver also has a view to the rear by means of an interior mirror. In driveaway-towaway operations, a driven vehicle shall have at least one mirror furnishing a clear view to the rear, and if the interior mirror does not provide the clear view, an additional mirror shall be attached to the left side of the driven vehicle to provide the clear view to the rear.

(b) Fuel Container Not to Project. — No part of any fuel tank or container or intake pipe shall project beyond the sides of the motor vehicle. (1949, c. 1207, s. 1; 1951, c. 819, s. 1; 1955, c. 1157, ss. 1, 4; 1991, c. 113, s. 1; c. 761, s. 6.)

§ 20-118. Weight of vehicles and load.

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. — The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. — The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. — Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. — The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. — Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles*					
*Axles**	*2 Axles*	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000	66500	72000	77500
31		59000	62500	67500	72500	78000
32		60000	63500	68000	73000	78500
33			64000	68500	74000	79000
34			64500	69000	74500	80000

Distance Between	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles*					
*Axles**	*2 Axles*	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
35			65500	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		
46			72500	76500		
47			73500	77500		
48			74000	78000		
49			74500	78500		
50			75500	79000		
51			76000	80000		
52			76500			
53			77500			
54			78000			
55			78500			
56			79500			
57			80000			

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

**See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. — The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

  b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to either one of the two nearest highways that is not a light-traffic road:

  a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

  b. Meats or agricultural crop products transported from a farm to first market.

  c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.

  d. Livestock or poultry transported from their point of origin to first market.

  e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

  f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).

  g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

  h. Treated sludge collected from a wastewater treatment facility.

  i. Apples when transported from the orchard to the first processing or packing point.

  j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow any disabled truck or other motor vehicle or combination of vehicles to a place for repairs, parking, or storage

within 50 miles from the point that the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles operating on interstate highways, vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions set out below:

a. Is hauling agricultural crops from the farm where the crop is grown to any market within 150 miles of that farm.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

b1. Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.

c. Does not exceed a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds.

(13) Vehicles specifically designed for fire fighting that are owned by a municipal or rural fire department. This exception does not apply to vehicles operating on interstate highways.

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or exceed any posted bridge weight limits.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.

b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or exceed any posted bridge weight limits.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds.

(d) The Department of Transportation is authorized to abrogate certain exceptions. The exceptions provided for in G.S. 20-118(c)(4) and 20-118(c)(5) as applied to any light-traffic road may be abrogated by the Department of Transportation upon a determination of the Department of Transportation that undue damage to such light-traffic road is resulting from such vehicles exempted by G.S. 20-118(c)(4) and 20-118(c)(5). In those cases where the exemption to the light-traffic roads are abrogated by the Department of Transportation, the Department shall post the road to indicate no exemptions.

(e) Penalties. —

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section, or by a special permit issued pursuant to G.S. 20-119, as follows: for the first 2,000 pounds

or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated. Notwithstanding any provision to the contrary, a vehicle with a special permit that is subject to additional penalties under this subsection based on a violation of any of the permit restrictions set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten thousand dollars ($10,000), based on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection.

(7) The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(f) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 15.

(g) General Statutes 20-118 shall not be construed to permit the gross weight of any vehicle or combination in excess of the safe load carrying capacity established by the Department of Transportation on any bridge pursuant to G.S. 136-72.

(h) Tolerance. — A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to a vehicle exceeding posted bridge weight limitations as posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998.

(i) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 16.

(j) Repealed by Session Laws 1987, c. 392.

(k) A vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton gin, or sage to market, may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding

50,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34; 1977, 2nd Sess., c. 1178; 1981, c. 690, ss. 27, 28; c. 726; c. 1127, s. 53.1; 1983, c. 407; c. 724, s. 1; 1983 (Reg. Sess., 1984), c. 1116, ss. 105-109; 1985, c. 54; c. 274; 1987, c. 392; c. 707, ss. 1-4; 1991, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 905, s. 1; 1993, c. 426, ss. 1, 2; c. 470, s. 1; c. 533, s. 11; 1993 (Reg. Sess., 1994), c. 761, ss. 10-16; 1995, c. 109, s. 3; c. 163, s. 4; c. 332, ss. 1-3 ; c. 509, s. 135.1(b); 1995 (Reg. Sess., 1996), c. 756, s. 29; 1997-354, s. 1; 1997-373, s. 1; 1997-466, s. 2; 1998-149, ss. 8, 9, 9.1; 1998-177, s. 1; 1999-452, s. 23; 2000-57, s. 1; 2001-487, ss. 10, 50(e); 2002-126, s. 26.16(a); 2004-145, ss. 1, 2; 2005-248, s. 1; 2005-276, s. 6.37(o); 2005-361, s. 3; 2006-135, s. 1; 2006-264, s. 37; 2008-221, ss. 7, 8, 9; 2009-127, s. 2; 2009-376, ss. 6, 16(a), 16(b); 2009-531, s. 1.)

Effect of Amendments. — Session Laws 2008-221, ss. 7-9, effective September 1, 2008, rewrote subdivision (c)(12); in subdivision (c)(15)a, inserted "is hauling raw logs to first market"; in subdivision (c)(15)b, inserted "except as provided by subdivision (c)(5) of this section"; substituted "50,000" for "44,000" at the end of the first sentence of subsection (k); and made minor grammatical changes.

Session Laws 2009-127, s. 2, effective June 19, 2009, in subsection (k), in the first sentence, deleted "From September 1 through March 1 of each year" at the beginning, and inserted "or sage to market" near the middle.

Session Laws 2009-376, s. 6, effective July 31, 2009, in subdivision (e)(3), in the second sentence, inserted "of this section, or by a special permit issued pursuant to G.S. 20-119", and added the last sentence.

Session Laws 2009-376, s. 16(a) and (b), effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, in subdivision (c)(14)b., substituted "exceed any posted bridge weight limits" for "posted bridge"; in subdivision (c)(15)b. substituted "exceed any posted bridge weight limits" for "a posted bridge"; and in subsection (h), substituted "vehicle exceeding posted bridge weight limitations as posted" for "bridges posted" in the third sentence.

Session Laws 2009-531, s. 1, effective December 1, 2009, and applicable to offenses committed on or after that date, substituted "any market within 150 miles of that farm" for "the closest market" at the end of subdivision (c)(12)a.

CASE NOTES

The penalties prescribed in this section are deemed a "tax" under G.S. 20-96 and qualify as "any tax" as used in G.S. 20-91.1 [repealed]. Cedar Creek Enters., Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

Payments authorized by G.S. 20-118(e) are punitive in nature and are therefore subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

Invalid Penalty. — Where the DMV assessed a penalty for operating a vehicle on the highways with a gross weight in excess of that allowed under the license obtained pursuant to G.S. 20-96, but not in excess of the maximum axle weight limits, and such penalty was not authorized by this section, such penalty violated N.C. Const., Art. IV, § 1 and 3, since there was no reasonable necessity for conferring absolute judicial discretion in the DMV. Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985), decided prior to the 1985 amendment to § 20-96.

Although it was uncontroverted that a trucking company did not have the required number of escorts for a truck operating under a special permit, G.S. 20-119(d) and G.S. 20-118(e) did not authorize the North Carolina Department of Crime Control and Public Safety to issue an additional overweight penalty based on the difference between the actual weight of the truck (181,180 pounds) and the statutory weight listed in G.S. 20-118(b) (80,000 pounds), where the actual weight did not violate the weight limit set out in the special permit. Daily

Express, Inc. v. N.C. Deparment of Crime Control & Pub. Safety, — N.C. App. —, 671 S.E.2d 587, 2009 N.C. App. LEXIS 116 (2009).

OPINIONS OF ATTORNEY GENERAL

The penalties provided in former subdivisions (c)(5) and (c)(12) of this section are mandatory. — See opinion of Attorney General to Mr. J.F. Alexander, 44 N.C.A.G. 307 (1975).

A truck equipped with a total of four axles operating with one of the axles (air bag) in a raised position and not carrying any load is subject to the penalties prescribed by law if the weight of the truck exceeds the permissible limit for three axles. See opinion of Attorney General to Mr. J.G. Wilson, Director, License, Theft & Weight Enforcement, Division of Motor Vehicles, 52 N.C.A.G. 126 (1983).

Military vehicles being operated pursuant to military orders are not subject to subsection (b) of this section. See opinion of Attorney General to Col. L. M. Brinkley, Division of National Guard, 53 N.C.A.G. 54 (1984).

§ 20-118.1. Officers may weigh vehicles and require overloads to be removed.

A law enforcement officer may stop and weigh a vehicle to determine if the vehicle's weight is in compliance with the vehicle's declared gross weight and the weight limits set in this Part. The officer may require the driver of the vehicle to drive to a scale located within five miles of where the officer stopped the vehicle.

Any person operating a vehicle or a combination of vehicles having a GVWR of 10,001 pounds or more or any vehicle transporting hazardous materials that is required to be placarded under 49 C.F.R. § 171-180 must enter a permanent weigh station or temporary inspection or weigh site as directed by duly erected signs or an electronic transponder for the purpose of being electronically screened for compliance, or weighed, or inspected.

If the vehicle's weight exceeds the amount allowable, the officer may detain the vehicle until the overload has been removed. Any property removed from a vehicle because the vehicle was overloaded is the responsibility of the owner or operator of the vehicle. The State is not liable for damage to or loss of the removed property.

Failure to permit a vehicle to be weighed or to remove an overload is a misdemeanor of the Class set in G.S. 20-176. An officer must weigh a vehicle with a scale that has been approved by the Department of Agriculture and Consumer Services.

A privately owned noncommercial horse trailer constructed to transport four or fewer horses shall not be required to stop at any permanent weigh station in the State while transporting horses, unless the driver of the vehicle hauling the trailer is directed to stop by a law enforcement officer. A 'privately owned noncommercial horse trailer' means a trailer used solely for the occasional transportation of horses and not for compensation or in furtherance of a commercial enterprise. (1927, c. 148, s. 37; 1949, c. 1207, s. 3; 1951, c. 1013, s. 4; 1979, c. 436, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1259, s. 2; 1993, c. 539, s. 356; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 109, s. 4; 1997-261, s. 109; 2001-487, s. 50(f); 2003-338, s. 1.)

§ 20-118.2. Authority to fix higher weight limitations at reduced speeds for certain vehicles.

The Department of Transportation is hereby authorized and empowered to fix higher weight limitations at reduced speeds for vehicles used in transporting property when the point of origin or destination of the motor vehicles is located upon any light traffic highway, county road, farm-to-market road, or any other roads of the secondary system only and/or to the extent only that the motor vehicle is necessarily using said highway in transporting the property from the bona fide point of origin of the property being transported or to the bona fide point of destination of said property and such weights may be different from the weight of those vehicles otherwise using such roads. (1951, c. 1013, s. 7A; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

§ 20-118.3. Vehicle or combination of vehicles operated without registration plate subject to civil penalty.

Any vehicle or combination of vehicles being operated upon the highway of this State either by a resident or nonresident without having been issued therefor a registration plate by the appropriate jurisdiction shall be subject to a civil penalty equal to the North Carolina annual fee for the gross weight of the vehicle and in addition thereto the license fee applicable for the remainder of the current registration year, provided a nonresident shall pay the North Carolina license fee or furnish satisfactory proof of payment of required registration fee to its base jurisdiction. The civil penalties provided for in this section shall not be enforceable through criminal sanctions and the provisions of G.S. 20-176 shall not apply to this section. (1981 Reg. Sess., 1982, c. 1259, s. 1.)

CASE NOTES

Cited in Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985).

§ 20-118.4. Firefighting equipment exempt from size and weight restrictions while transporting or moving heavy equipment in an emergency; permits.

(a) Exemption From Weight and Size Restrictions During Emergency Response. — Any overweight or oversize vehicle owned and operated by a State or local government or cooperating federal agency is exempt from the weight and size restrictions of this Chapter and implementing rules while it is actively engaged in (i) a response to a fire under the authority of a forest ranger pursuant to G.S. 113-55(a); (ii) a county request for forest protection assistance pursuant to G.S. 113-59; (iii) a request for assistance under a state of emergency declared pursuant to G.S. 14-288.12, 14-288.13, 14-288.14, 14-288.15, and any other applicable statutes and provisions of common law; (iv) a request for assistance under a disaster declared pursuant to G.S 166A-6 or G.S. 166A-8, when the vehicle meets the following conditions:

(1) The vehicle weight does not exceed the manufacturer's GVWR or 90,000 pounds gross weight, whichever is less.

(2) The tri-axle grouping weight does not exceed 50,000 pounds, tandem axle weight does not exceed 42,000 pounds, and the single axle weight does not exceed 22,000 pounds.

(3) A vehicle/vehicle combination does not exceed 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

(b) Marking, Lighting, and Bridge Requirements. — Vehicle/vehicle combinations subject to an exemption or permit under this section shall not be exempt from the requirement of a yellow banner on the front and rear measuring a total length of seven feet by 18 inches bearing the legend "Oversize Load" in 10 inch black letters 1.5 inches wide, and red flags measuring 18 inches square to be displayed on all sides at the widest point of load. In addition, when operating between sunset and sunrise, flashing amber lights shall be displayed on each side of the load at the widest point. Vehicle/vehicle combinations subject to an exemption or permit under this section shall not exceed posted bridge limits without prior approval from the Department of Transportation.

(c) Definition of "Response". — A response lasts from the time an overweight or oversize vehicle is requested until the vehicle is returned to its base location and restored to a state of readiness for another response.

(d) Discretionary Annual or Single Trip Permit for Emergency Response by a Commercial Vehicle. — The Department of Transportation may, in its discretion, issue an annual or single trip special use permit waiving the weight and size restrictions of this Chapter and implementing rules for a commercial overweight or oversize vehicle actively engaged in a response to a fire or a request for assistance from a person authorized to direct emergency operations. The Department of Transportation may condition the permit with safety measures that do not unreasonably delay a response. The Department of Transportation may issue the single trip special use permit upon verbal communication, provided the requestor submits appropriate documentation and fees on the next business day.

(e) No Liability for Issuance of Permit Under This Section. — The action of issuing a permit by the Department of Transportation under this section is a governmental function and does not subject the Department of Transportation to liability for injury to a person or damage to property as a result of the activity. (2007-290, s. 1.)

§ 20-119. Special permits for vehicles of excessive size or weight; fees.

(a) The Department of Transportation may, in its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.

(a1) Where permitted by the posted road and bridge limits, the Department may issue a single trip permit for a vehicle or vehicle combination responding to an emergency event that could result in severe damage, injury, or loss of life or property resulting from any natural or man-made emergency as determined by either the Secretary of Crime Control and Public Safety or the Secretary of Transportation or their designees. A permit issued under this subsection may allow for travel from a specific origin to destination and return 24 hours a day, seven days a week, including holidays. Permits issued under this subsection shall include a requirement for banners, flags, and other safety devices, as determined by the Department, and a requirement for a law enforcement escort or a vehicle being operated by a certified escort vehicle operator if traveling between sunset and sunrise. To obtain authorization to travel during restricted times, application shall be made with any required documentation to the proper officials as designated by the Department. If an emergency permit is issued under this subsection, the requestor shall contact the Department of Transportation's central permit office on the next business day to complete any further documentation and pay the applicable fees.

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers or Trailer Frames	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of Crime Control and Public Safety shall assess a civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of one thousand five hundred dollars ($1,500) for operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination.

(1a) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, or failing to comply with dimension restrictions of a permit.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1), (1a), or (2) of this subsection.

(d1) In addition to the penalties assessed under subsection (d) of this section, the Department of Crime Control and Public Safety shall assess a civil penalty, not to exceed ten thousand dollars ($10,000), in accordance with G.S. 20-118(e)(1) and (e)(3) against the registered owner of the vehicle for any of the following:

(1) Operating without the issuance of a required permit.
(2) Operating off permitted route of travel.
(3) Failing to comply with travel restrictions of the permit.
(4) Operating without the proper vehicle registration or license for the class of vehicle being operated.

A violation of this subsection constitutes operating a vehicle without a special permit.

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for the following:

(1) A vehicle carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that does not exceed 14 feet in width. A permit issued under this subdivision is valid for unlimited movement without escorts on all State highways where the overwidth vehicle does not exceed posted bridge and load limits.
(2) A boat or boat trailer whose outside width equals or exceeds 120 inches. A permit issued under this subdivision must restrict a vehicle's towing of the boat or boat trailer to daylight hours only.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation. (1937, c. 407, s. 83; 1957, c. 65, s. 11; 1959, c. 1129; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1981, c. 690, ss. 31, 32; c. 736, ss. 1, 2; 1989, c. 54; 1991, c. 604, ss. 1, 2; c. 689, s. 334; 1993, c. 539, s. 357; 1994, Ex. Sess., c.

24, s. 14(c); 2000-109, ss. 7(a), 7(f), 7(g); 2001-424, s. 27.10; 2003-383, s. 7; 2004-124, s. 30.3E(a), (b); 2004-145, s. 3; 2005-361, s. 4; 2007-290, s. 2; 2008-160, s. 2; 2008-229, s. 2; 2009-376, ss. 7, 8.)

Editor's Note. — Session Laws 2000-109, s. 7(g), was codified as subsection (e) of this section at the direction of the Revisor of Statutes, effective July 13, 2000. Pursuant to Session Laws 2000-109, s. 10(g), the first report required by s. 7(g) is due December 1, 2002.

Session Laws 2008-229 was House Bill 2167, which was vetoed by the Governor on August 17, 2008. The General Assembly, in a special session on August 27, 2008, voted to override the Governor's veto. Session Laws 2008-229 became law notwithstanding the Governor's veto on August 27, 2008.

Effect of Amendments. — Session Laws 2008-160, s. 2, effective August 3, 2008, inserted "or Trailer Frames" on the list of commodities in subsection (b).

Session Laws 2008-229, s. 2, effective August 27, 2008, redesignated the existing provisions of subsection (g) as the introductory language of subsection (g) and subdivision (g)(1), and inserted "the following" at the end of the introductory language; in subdivision (g)(1), substituted "A vehicle" for "vehicles" at the beginning, substituted "A permit issued under this subdivision is" for "These permits shall be", and made minor grammatical changes; and added subdivision (g)(2).

Session Laws 2009-376, ss. 7 and 8, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, in subsection (d), in the introductory language, substituted "shall assess" for "may assess"; added present subdivision (d)(1); redesignated former subdivision (d)(1) as subdivision (d)(1a), deleted "or failing to comply with the number of properly certified escort vehicles required" from the end, and made a related change; in the last paragraph, substituted "subdivision (1), (1a), or (2)" for "subdivision (1) or (2)" in the first sentence, and deleted the former last two sentences, which read: "In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000)."; and added subsection (d1).

CASE NOTES

This section was enacted for the protection of the traveling public. Lyday v. Southern Ry., 253 N.C. 687, 117 S.E.2d 778 (1961).

Failure to Obtain Permit as Negligence Per Se. — The failure to obtain a permit to operate oversize or overweight vehicles in violation of this section is negligence per se. Byers v. Standard Concrete Prods. Co., 268 N.C. 518, 151 S.E.2d 38 (1966).

Whether violation of this section by plaintiff constitutes contributory negligence depends on whether or not such violation is a proximate cause, or one of the proximate causes, of the damages suffered by plaintiff. Lyday v. Southern Ry., 253 N.C. 687, 117 S.E.2d 778 (1961).

Vehicles transporting poles in the daytime are exempt from the requirements of § 20-116(e), and therefore during the daytime it is not negligence per se to transport without a special permit a 40-foot pole on a trailer. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Imposition of a Fine. — Although it was uncontroverted that a trucking company did not have the required number of escorts for a truck operating under a special permit, G.S. 20-119(d) and G.S. 20-118(e) did not authorize the North Carolina Department of Crime Control and Public Safety to issue an additional overweight penalty based on the difference between the actual weight of the truck (181,180 pounds) and the statutory weight listed in G.S. 20-118(b) (80,000 pounds), where the actual weight did not violate the weight limit set out in the special permit. Daily Express, Inc. v. N.C. Deparment of Crime Control & Pub. Safety, — N.C. App. —, 671 S.E.2d 587, 2009 N.C. App. LEXIS 116 (2009).

Cited in C & H Transp. Co. v. North Carolina DMV, 34 N.C. App. 616, 239 S.E.2d 309 (1977).

§ 20-119.1. Use of excess overweight and oversize fees.

Funds generated by overweight and oversize permit fees in excess of the cost of administering the program, as determined pursuant to G.S. 20-119(e), shall be used for highway and bridge maintenance required as a result of damages caused from overweight or oversize loads. (2005-276, s. 28.5.)

§ 20-120. Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads.

It shall be unlawful for any person, firm or corporation to operate, or have operated on any public highway in the State any open, flat truck loaded with logs, cotton bales, boxes or other load piled on said truck, without having the said load securely fastened on said truck.

It shall be unlawful for any firm, person or corporation to operate or permit to be operated on any highway of this State a truck or trucks on which leaf tobacco in barrels or hogsheads is carried unless each section or tier of such barrels or hogsheads are reasonably securely fastened to such truck or trucks by metal chains or wire cables, or manila or hemp ropes of not less than five-eighths inch in diameter, to hold said barrels or hogsheads in place under any ordinary traffic or road condition: Provided that the provisions of this paragraph shall not apply to any truck or trucks on which the hogsheads or barrels of tobacco are arranged in a single layer, tier, or plane, it being the intent of this paragraph to require the use of metal chains or wire cables only when barrels or hogsheads of tobacco are stacked or piled one upon the other on a truck or trucks. Nothing in this paragraph shall apply to trucks engaged in transporting hogsheads or barrels of tobacco between factories and storage houses of the same company unless such hogsheads or barrels are placed upon the truck in tiers. In the event the hogsheads or barrels of tobacco are placed upon the truck in tiers same shall be securely fastened to the said truck as hereinbefore provided in this paragraph.

Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. (1939, c. 114; 1947, c. 1094; 1953, c. 240; 1993, c. 539, s. 358; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-121. When authorities may restrict right to use highways.

The Department of Transportation or local authorities may prohibit the operation of vehicles upon or impose restrictions as to the weight thereof, for a total period not to exceed 90 days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which the body adopting the ordinance is responsible, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be damaged unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. The local authority enacting any such ordinance shall erect, or cause to be erected and maintained, signs designating the provisions of the ordinance at each end of that portion of any highway to which the ordinance is applicable, and the ordinance shall not be effective until or unless such signs are erected and maintained. (1937, c. 407, s. 84; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Cross References. — As to powers of municipal corporations with regard to streets, see § 160A-296 et seq.

§ 20-121.1. Operation of a low-speed vehicle on certain roadways.

The operation of a low-speed vehicle is authorized with the following restrictions:

(1) A low-speed vehicle may be operated only on streets and highways where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle from crossing a road or street at an intersection where the road or street being crossed has a posted speed limit of more than 35 miles per hour.

(2) A low-speed vehicle shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number.

(3) A low-speed vehicle shall be registered and insured in accordance with G.S. 20-50 and G.S. 20-309.

(4) The Department of Transportation may prohibit the operation of low-speed vehicles on any road or highway if it determines that the prohibition is necessary in the interest of safety.

(5) Low-speed vehicles must comply with the safety standards in 49 C.F.R. § 571.500. (2001-356, s. 5.)

§ 20-122. Restrictions as to tire equipment.

(a) No vehicle will be allowed to move on any public highway unless equipped with tires of rubber or other resilient material which depend upon compressed air, for support of a load, except by special permission of the Department of Transportation which may grant such special permits upon a showing of necessity. This subsection shall have no application to the movement of farm vehicles on highways.

(b) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway and except, also, that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to slide or skid. It shall be permissible to use upon any vehicle for increased safety, regular and snow tires with studs which project beyond the tread of the traction surface of the tire not more than one sixteenth of an inch when compressed.

(c) The Department of Transportation or local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugation upon the periphery of such movable tracks or farm tractors or other farm machinery.

(d) It shall not be unlawful to drive farm tractors on dirt roads from farm to farm: Provided, in doing so they do not damage said dirt roads or interfere with traffic. (1937, c. 407, s. 85; 1939, c. 266; 1957, c. 65, s. 11; 1965, c. 435; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1979, c. 515.)

CASE NOTES

Cited in State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965).

§ 20-122.1. Motor vehicles to be equipped with safe tires.

(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves: Provided, the two thirty-seconds tread depth requirements of this section shall not apply to dual wheel trailers. For the purpose of this section, the following definitions shall apply:

(1) "Chunking" — separation of the tread from the carcass in particles which may range from very small size to several square inches in area.
(2) "Cord" — strands forming a ply in a tire.
(3) "Tread" — portion of tire which comes in contact with road.
(4) "Tread depth" — the distance from the base of the tread design to the top of the tread.

(a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is operated on the streets or highways of this State shall be equipped with tires that are safe for the operation of the vehicle and do not expose the public to needless hazard. A tire is unsafe if any of the following applies:

(1) It is cut, cracked, or worn so as to expose tire cord.
(2) There is a visible tread separation or chunking.
(3) The steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove.
(4) Any nonsteering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove.
(5) The tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.

(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section or that such vehicle had been sold, destroyed, or permanently removed from the highways. Violation of this section shall not constitute negligence per se. (1969, c. 378, s. 1; c. 1256; 1985, c. 93, ss. 1, 2; 2009-376, s. 5.)

Editor's Note. — Session Laws 1985, c. 93, s. 3 provided that the act would not apply to the manner in which tread depth is measured on tires used on farm vehicles which would be registered for less than a full calendar year.

Effect of Amendments. — Session Laws 2009-376, s. 5, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, in subsection (a), in the introductory language, deleted the former fourth sentence, which read: "Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels."; and added subsection (a1).

§ 20-123. Trailers and towed vehicles.

(a) The limitations in G.S. 20-116 on combination vehicles do not prohibit the towing of farm trailers not exceeding three in number nor exceeding a total length of 50 feet during the period from one-half hour before sunrise until one-half hour after sunset when a red flag of at least 12 inches square is prominently displayed on the last vehicle. The towing of farm trailers and equipment allowed by this subsection does not apply to interstate or federal numbered highways.

(b) No trailer or semitrailer or other towed vehicle shall be operated over the highways of the State unless such trailer or semitrailer or other towed vehicle be firmly attached to the rear of the towing unit, and unless so equipped that it will not snake, but will travel in the path of the vehicle drawing such trailer or semitrailer or other towed vehicle, which equipment shall at all times be kept in good condition.

(c) In addition to the requirements of subsections (a) and (b) of this section, the towed vehicle shall be attached to the towing unit by means of safety chains or cables which shall be of sufficient strength to hold the gross weight of the towed vehicle in the event the primary towing device fails or becomes disconnected while being operated on the highways of this State if the primary towing attachment is a ball hitch. Trailers and semitrailers having locking pins or bolts in the towing attachment to prevent disconnection, and the locking pins or bolts are of sufficient strength and condition to hold the gross weight of the towed vehicle, need not be equipped with safety chains or cables unless their operation is subject to the requirements of the Federal Motor Carrier Safety Regulations. Semitrailers in combinations of vehicles that are equipped with fifth wheel assemblies that include locking devices need not be equipped with safety chains or cables. (1937, c. 407, s. 86; 1955, c. 296, s. 3; 1963, c. 356, s. 2; c. 1027, s. 2; 1965, c. 966; 1971, c. 639; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, s. 34; 1981 (Reg. Sess., 1982), c. 1195; 1993, c. 71, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 15.)

Editor's Note. — Session Laws 2001-487, s. 21(c), repealed Session Laws 1997-148, s. 8, which had stated in its introductory language that "G.S. 20-123(57) reads as rewritten." There is no subdivision (57) in G.S. 20-123, and it appears that the amendment was intended to be for G.S. 120-123. The attempted amendment would have substituted "G.S. 143B-472.41" for "G.S. 143B-426.21" in subdivision (57).

Legal Periodicals. — For note on State regulation of twin-trailer trucks, see 4 Campbell L. Rev. 127 (1981).

CASE NOTES

One using a vehicle trailer on the public highways is required to exercise reasonable care, both as to the equipment of the trailer and as to the operation of the vehicle to which it is attached. Miller v. Lucas, 267 N.C. 1, 147 S.E.2d 537 (1966).

In the case of a trailer not controlled in its movements by any person thereon, the operator of the vehicle to which the trailer is attached must exercise reasonable care to see that it is properly attached and that the progress of the two vehicles does not cause danger or injury. Miller v. Lucas, 267 N.C. 1, 147 S.E.2d 537 (1966).

Safety Chains Required for Use of Ball Hitch. — G.S. 20-123(c) required the use of safety chains or cables when a ball hitch was the primary towing attachment; accordingly, a jury instruction regarding locking pins was not a correct statement of the law as it was undisputed that the primary towing attachment used by defendant to tow a trailer with his truck was a ball hitch. State v. Hall, 173 N.C. App. 735, 620 S.E.2d 309, 2005 N.C. App. LEXIS 2295 (2005).

Violation of Section as Negligence Per Se. — A violation of this section, intended and designed to prevent injury to persons or property on the highways, is negligence per se. Miller v. Lucas, 267 N.C. 1, 147 S.E.2d 537 (1966).

Liability for Injury Caused by Defect in Trailer Hitch. — As to liability of the owner of a motor vehicle with a trailer attached for loss or injury inflicted by reason of a defect in the trailer fastening or hitch resulting in the trailer breaking loose, see Miller v. Lucas, 267 N.C. 1, 147 S.E.2d 537 (1966).

Cited in State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

§ 20-123.1. Steering mechanism.

The steering mechanism of every self-propelled motor vehicle operated on the highway shall be maintained in good working order, sufficient to enable the operator to control the vehicle's movements and to maneuver it safely. (1957, c. 1038, s. 3.)

§ 20-123.2. Speedometer.

(a) Every self-propelled motor vehicle when operated on the highway shall be equipped with a speedometer which shall be maintained in good working order.

(b) Any person violating this section shall have committed an infraction and may be ordered to pay a penalty of not more than twenty-five dollars ($25.00). No drivers license points, insurance points or premium surcharge shall be assessed on or imputed to any party on account of a violation of this section. (1989 (Reg. Sess., 1990), c. 822, s. 2.)

Cross References. — As to violation of G.S. 20-123.2 being a lesser included offense in any violation of the speed restrictions contained in G.S. 20-141, see G.S. 20-141(o).

§ 20-124. Brakes.

(a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop such vehicle or vehicles, and such brakes shall be maintained in good working order and shall conform to regulations provided in this section.

(b) Repealed by Session Laws 1973, c. 1330, s. 39.

(c) Every motor vehicle when operated on a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and shall have all originally equipped brakes in good working order, including two separate means of applying the brakes. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes.

(d) Every motorcycle and every motor-driven cycle when operated upon a highway shall be equipped with at least one brake which may be operated by hand or foot.

(e) Motor trucks and tractor-trucks with semitrailers attached shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of 20 miles per hour within the following distances: Thirty feet with both hand and service brake applied simultaneously and 50 feet when either is applied separately, except that vehicles maintained and operated permanently for the transportation of property and which were registered in this or any other state or district prior to August, 1929, shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of 20 miles per hour within a distance of 50 feet with both hand and service brake applied simultaneously, and within a distance of 75 feet when either applied separately.

(e1) Every motor truck and truck-tractor with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or more axles need not have brakes on the front wheels if manufactured prior to July 25, 1980. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124(e).

(f) Every semitrailer, or trailer, or separate vehicle, attached by a drawbar or coupling to a towing vehicle, and having a gross weight of two tons, and all house trailers of 1,000 pounds gross weight or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in subsection (e) of this section and shall be of a type approved by the Commissioner.

It shall be unlawful for any person or corporation engaged in the business of selling house trailers at wholesale or retail to sell or offer for sale any house trailer which is not equipped with the brakes required by this subsection.

This subsection shall not apply to house trailers being used as dwellings, or to house trailers not intended to be used or towed on public highways and roads. This subsection shall not apply to house trailers with a manufacturer's certificate of origin dated prior to December 31, 1974.

(g) The provisions of this section shall not apply to a trailer when used by a farmer, a farmer's tenant, agent, or employee if the trailer is exempt from registration by the provisions of G.S. 20-51. This exemption does not apply to trailers that are equipped with brakes from the manufacturer and that are manufactured after October 1, 2009.

(h) From and after July 1, 1955, no person shall sell or offer for sale for use in motor vehicle brake systems in this State any hydraulic brake fluid of a type and brand other than those approved by the Commissioner of Motor Vehicles. From and after January 1, 1970, no person shall sell or offer for sale in motor vehicle brake systems any brake lining of a type or brand other than those approved by the Commissioner of Motor Vehicles. Violation of the provisions of this subsection shall constitute a Class 2 misdemeanor. (1937, c. 407, s. 87; 1953, c. 1316, s. 2; 1955, c. 1275; 1959, c. 990; 1965, c. 1031; 1967, c. 1188; 1969, cc. 787, 866; 1973, c. 1203; c. 1330, s. 39; 1993, c. 539, s. 359; 1994, Ex. Sess., c. 24, s. 14(c); 2009-376, ss. 10, 11.)

Effect of Amendments. — Session Laws 2009-376, ss. 10 and 11, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, in subsection (e1), in the first sentence, substituted "truck-tractor" for "tractor-truck" near the beginning, and "wheels if manufactured prior to July 25, 1980" for "wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes" at the end; and in subsection (g), in the first sentence, substituted "a trailer" for "any trailer or semitrailer", "a farmer's tenant" for "his tenant", and "if the trailer" for "under such circumstances that such trailer or semitrailer"; and added the second sentence.

CASE NOTES

Purpose of Section. — This section was enacted to promote safe operation of motor vehicles on the highways. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

The purpose of this section is to protect from injury all persons using the highway, both occupants of the vehicle in question and others. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

The language of this section is mandatory. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

But Section Must Be Given Reasonable Interpretation. — Although the language of this section is mandatory, the statute must be given a reasonable interpretation to promote its intended purpose. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963); Wilcox

v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967); Stone v. Mitchell, 5 N.C. App. 373, 168 S.E.2d 668 (1969).

The legislature did not intend to make operators of motor vehicles insurers of the adequacy of their brakes. The operator must act with care and diligence to see that his brakes meet the standard prescribed by this section; but if because of some latent defect, unknown to the operator and not reasonably discoverable upon proper inspection, he is not able to control the movement of his car, he is not negligent, and for that reason not liable for injuries directly resulting from such loss of control; such injuries result from an unavoidable accident. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963); Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967); Stone v. Mitchell, 5 N.C. App. 373, 168 S.E.2d 668 (1969).

The duty imposed by this section rests both upon the owner and upon the driver of the vehicle, though knowledge of a defect, or negligence in failing to discover it, on the part of the one would not necessarily be imputed to the other. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Violation of this section and other safety statutes is negligence per se, unless the statute expressly provides otherwise. McCall v. Dixie Cartage & Warehousing, Inc., 272 N.C. 190, 158 S.E.2d 72 (1967).

One who fails to comply with the provisions of this section is negligent. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Where the plaintiff has shown the defendant's brakes to be defective, this is negligence per se. Anderson v. Robinson, 8 N.C. App. 224, 174 S.E.2d 45 (1970).

Willingness of plaintiff's employee-driver and partner-owner to operate tractor on a public highway with defective or malfunctioning brakes and knowledge thereof is negligence as a matter of law. Rose v. Herring Tractor & Truck Co., 47 N.C. App. 643, 267 S.E.2d 717 (1980).

But Such Violation Must Be Proximate Cause of Injury to Be Actionable. — Violation of this section is negligence per se, but such violation must be proximate cause of injury to become actionable. Tysinger v. Coble Dairy Prods., 225 N.C. 717, 36 S.E.2d 246 (1945); Arnett v. Yeago, 247 N.C. 356, 100 S.E.2d 855 (1957); Watts v. Watts, 252 N.C. 352, 113 S.E.2d 720 (1960); Bundy v. Belue, 253 N.C. 31, 116 S.E.2d 200 (1960); Tate v. Bryant, 16 N.C. App. 132, 191 S.E.2d 433 (1972).

If the negligence resulting from failure to comply with the provisions of this section proximately causes injury, liability results. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Question of Proximate Cause Is for Jury. — Whether a violation of the provisions of this section is a proximate cause of an injury is for the jury to determine. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Reasonable Excuse for Failure to Comply with Section. — In recognition of the principle that this statute must be reasonably construed and applied, defendant could offer proof of legal excuse in avoidance of his failure to have observed the duty created by this section, i.e., proof that an occurrence wholly without his fault and which proper care on his part would not have avoided made compliance with the section impossible at the moment complained of. Anderson v. Robinson, 8 N.C. App. 224, 174 S.E.2d 45 (1970).

The defendant may excuse violation of this section by showing a sudden and unexpected brake failure not the result of his failure to reasonably inspect the vehicle. Tate v. Bryant, 16 N.C. App. 132, 191 S.E.2d 433 (1972).

As to liability of bailor automobile dealer when he permits a prospective purchaser to test drive a vehicle with defective brakes, see Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Inference from Runaway Automobile. — The fact that an automobile ran down the street for a considerable distance immediately after it was parked permitted the inference that plaintiff's intestate did not turn its front wheels to the curb of the street, as required by this section and G.S. 20-163. Watts v. Watts, 252 N.C. 352, 113 S.E.2d 720 (1960).

Doctrine of res ipsa loquitur does not apply to a brake failure several hours and many miles after delivery of the car to the bailee. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Brake Failure Is Not Necessarily Negligence. — While this section requires motorists to maintain their brakes in good working order, and failure to do so is negligence per se, the mere fact that one's brakes failed was not enough to establish a breach of the duty of due care. Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986).

Motorist Not Liable for Unexpected Brake Failure. — Where a brake failure is sudden and unexpected and could not have been discovered even with reasonable inspection, the motorist will not be held liable. Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986).

Breach of Duty in Delivery of Automobile with Defective Brakes Held a Jury Question. — Whether defendant breached duty to plaintiff's intestates by delivering to them an automobile when he knew, or by the exercise of ordinary care should have known, that its brakes were defective and its operation was dangerous was a question for the jury.

Austin v. Austin, 252 N.C. 283, 113 S.E.2d 553 (1960).

Evidence Held Sufficient to Negative Prima Facie Case of Negligence. — Corporate defendant's evidence to the effect that brakes on the vehicle in question had been overhauled and relined and had worked perfectly until some two days thereafter, when they suddenly failed, causing the accident in suit, and that after the collision it was ascertained that the flange on one of the wheels was broken, permitting brake fluid to escape, required the court to instruct the jury that if they accepted defendant's evidence it was sufficient to negative the prima facie case of negligence made out by plaintiff's evidence of the failure of the brakes on defendant's vehicle. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Instruction Held to Be Harmless. — A charge as to proper brakes on motor vehicles, in compliance with this section, where the evidence showed no mention of brakes, was a harmless inadvertence. Hopkins v. Colonial Stores, Inc., 224 N.C. 137, 29 S.E.2d 455 (1944), overruled on other grounds, 246 N.C. 618, 99 S.E.2d 771 (1957).

Applied in Burlington Indus., Inc. v. State Hwy. Comm'n, 262 N.C. 620, 138 S.E.2d 281 (1964).

Cited in Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384 (1939); Crotts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957); Jones v. C. B. Atkins Co., 259 N.C. 655, 131 S.E.2d 371 (1963); Warren v. Jeffries, 263 N.C. 531, 139 S.E.2d 718 (1965); State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965); Vann v. Hayes, 266 N.C. 713, 147 S.E.2d 186 (1966); Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283 (1981); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

OPINIONS OF ATTORNEY GENERAL

Fold-Out Camper Trailers Are Not House Trailers. — See opinion of Attorney General to The Honorable Donald R. Kincaid, Member of Senate, N.C. General Assembly, 45 N.C.A.G. 210 (1976).

§ 20-125. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the Commissioner.

(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(c) Repealed by Session Laws 1979, c. 653, s. 2. (1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257; 1975, c. 588; c. 734, s. 15; 1977, c. 52, s. 1; c. 438, s. 1; 1979, c. 653, s. 2; 1981, c. 964, s. 19; 1983, c. 32, s. 2; c. 768, s. 5; 1987, c. 266; 1989, c. 537; 1989 (Reg. Sess., 1990), c. 1020, s. 1; 1993 (Reg. Sess., 1994), c. 719, s. 2.)

Local Modification. — Brunswick: 1959, c. 211; Edgecombe: 1955, c. 1024.

CASE NOTES

Distinction Between Vehicles Making Normal Use of Highway and Those Engaged in Emergency Uses. — The legislature, in prescribing practical warning devices for use on motor vehicles, drew a distinction between vehicles making normal use of the highway and those engaged in emergency uses. For normal use, a horn audible for 200 feet under normal conditions was deemed adequate, under subsection (a) of this section; but something different and manifestly with a more authoritative voice and greater volume was expected of vehicles on emergency errands under subsection (b). McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

Applied in State v. Speights, 12 N.C. App. 32, 182 S.E.2d 204 (1971).

Cited in State v. Speights, 280 N.C. 137, 185 S.E.2d 152 (1971).

OPINIONS OF ATTORNEY GENERAL

Blue Light May Be Used for Law-Enforcement Vehicles. — See opinion of Attorney General to Chief W.W. Pleasants, Durham Chief of Police, 40 N.C.A.G. 391 (1970), issued prior to 1979 repeal of subsection (c), which related specifically to the use of blue lights.

§ 20-125.1. Directional signals.

(a) It shall be unlawful for the owner of any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, to register such vehicle or cause it to be registered in this State, or to obtain, or cause to be obtained in this State registration plates therefor, unless such vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either the front or rear and within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles.

(b) It shall be unlawful for any dealer to sell or deliver in this State any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, if he knows or has reasonable cause to believe that the purchaser of such vehicle intends to register it or cause it to be registered in this State or to resell it to any other person for registration in and use upon the highways of this State, unless such motor vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either of the front or rear or within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953, the signal device with which such motor vehicle is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Division shall be admissible in evidence in all the courts of this State.

(c) Trailers satisfying the following conditions are not required to be equipped with a directional signal device:

(1) The trailer and load does not obscure the directional signals of the towing vehicle from the view of a driver approaching from the rear and within a distance of 200 feet;

(2) The gross weight of the trailer and load does not exceed 4,000 pounds.

(d) Nothing in this section shall apply to motorcycles. (1953, c. 481; 1957, c. 488, s. 1; 1963, c. 524; 1969, c. 622; 1975, c. 716, s. 5.)

CASE NOTES

Cited in Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283 (1981).

OPINIONS OF ATTORNEY GENERAL

All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-126. Mirrors.

(a) No person shall drive a motor vehicle on the streets or highways of this State unless equipped with an inside rearview mirror of a type approved by the Commissioner, which provides the driver with a clear, undistorted, and reasonably unobstructed view of the highway to the rear of such vehicle; provided, a vehicle so constructed or loaded as to make such inside rearview mirror ineffective may be operated if equipped with a mirror of a type to be approved by the Commissioner located so as to reflect to the driver a view of the highway to the rear of such vehicle. A violation of this subsection shall not constitute negligence per se in civil actions. Farm tractors, self-propelled implements of husbandry and construction equipment and all self-propelled vehicles not subject to registration under this Chapter are exempt from the provisions of this section. Provided that pickup trucks equipped with an outside rearview mirror approved by the Commissioner shall be exempt from the inside rearview mirror provision of this section. Any inside mirror installed in any motor vehicle by its manufacturer shall be deemed to comply with the provisions of this subsection.

(b) It shall be unlawful for any person to operate upon the highways of this State any vehicle manufactured, assembled or first sold on or after January 1, 1966 and registered in this State unless such vehicle is equipped with at least one outside mirror mounted on the driver's side of the vehicle. Mirrors herein required shall be of a type approved by the Commissioner.

(c) No person shall operate a motorcycle upon the streets or highways of this State unless such motorcycle is equipped with a rearview mirror so mounted as to provide the operator with a clear, undistorted and unobstructed view of at least 200 feet to the rear of the motorcycle. No motorcycle shall be registered in this State after January 1, 1968, unless such motorcycle is equipped with a rearview mirror as described in this section. Violation of the provisions of this subsection shall not be considered negligence per se or contributory negligence per se in any civil action. (1937, c. 407, s. 89; 1965, c. 368; 1967, c. 282, s. 1; c. 674, s. 2; c. 1139; 2002-159, ss. 22(a), 22(b).)

Editor's Note. — Session Laws 1967, c. 282, s. 12 provided that any inside mirror installed in any motor vehicle by its manufacturer shall be deemed to comply with subsection (a) of this section.

CASE NOTES

Violation of this section and other safety statutes is negligence per se, unless the statute expressly provides otherwise. McCall v. Dixie Cartage & Warehousing, Inc., 272 N.C. 190, 158 S.E.2d 72 (1967).

Cited in Bechtler v. Bracken, 218 N.C. 515, 11 S.E.2d 721 (1940); State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

§ 20-127. Windows and windshield wipers.

(a) Windshield Wipers. — A vehicle that is operated on a highway and has a windshield shall have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper shall be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers shall be in good working order.

(b) Window Tinting Restrictions. — A window of a vehicle that is operated on a highway or a public vehicular area shall comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Provided, however, an untinted clear film which does not obstruct vision but which reduces or eliminates ultraviolet radiation from entering a vehicle may be applied to the windshield. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window shall be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.
(2) The light reflectance of the tinted window shall be twenty percent (20%) or less.
(3) Tinted film or another material used to tint the window shall be nonreflective and shall not be red, yellow, or amber.

(c) Tinting Exceptions. — The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.
(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.
(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.
(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.
(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.
(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).
(7) A window of a limousine.
(8) A window of a law enforcement vehicle.
(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.
(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.
(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(d) Violations. — A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.
(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. — It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged shall produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions.

(f) Medical Exception. — A person who suffers from a medical condition that causes the person to be photosensitive to visible light may obtain a medical exception permit. To obtain a permit, an applicant shall apply in writing to the Drivers Medical Evaluation Program and have his or her doctor complete the required medical evaluation form provided by the Division. The permit shall be valid for five years from the date of issue, unless a shorter time is directed by the Drivers Medical Evaluation Program. The renewal shall require a medical recertification that the person continues to suffer from a medical condition requiring tinting.

A person may receive no more than two medical exception permits that are valid at any one time. A permit issued under this subsection shall specify the vehicle to which it applies, the windows that may be tinted, and the permitted levels of tinting. The permit shall be carried in the vehicle to which it applies when the vehicle is driven on a highway.

The Division shall give a person who receives a medical exception permit a sticker to place on the lower left-hand corner of the rear window of the vehicle to which it applies. The sticker shall be designed to give prospective purchasers of the vehicle notice that the windows of the vehicle do not meet the requirements of G.S. 20-127(b), and shall be placed between the window and the tinting when the tinting is installed. The Division shall adopt rules regarding the specifications of the medical exception sticker. Failure to display the sticker is an infraction punishable by a two hundred dollar ($200.00) fine. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7; 1967, c. 1077; 1985, c. 789; 1985 (Reg. Sess., 1986), c. 997; 1987, c. 567; 1987 (Reg. Sess., 1988), c. 1082, ss. 7-8.1; 1989, c. 770, s. 66; 1991 (Reg. Sess., 1992), c. 1007, s. 34; 1993, c. 539, s. 360; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 683, s. 1; c. 754, s. 4; 1995, c. 14, s. 1; c. 473, s. 1; 2000-75, s. 1.)

Editor's Note. — The designations of subsections (d) and (e) were assigned by the Revisor of Statutes, as the amendment by Session Laws 1995, c. 473, s. 1, contained two subsection (c)'s.

Session Laws 2000-75, s. 2, provides:

"The Medical Review Branch of the Division of Motor Vehicles shall issue rules and create forms and permits necessary for this program. Until funds for this program are appropriated by the General Assembly, the Medical Review Branch shall manually issue all medical exception permits and shall manually maintain the records related specifically to these permits.

"The Division of Motor Vehicles shall add the medical exception described in Section 1 of this act [which amended G.S. 20-127] to the STARS program, to allow the computerized issuance of medical exception permits and to allow computerized maintenance of the records related specifically to these permits when it is modifying that computer program for some other purpose.

"The Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee six months after the first medical exception permit is issued on the number of permits issued and the projected additional costs, if any, of operating the program."

CASE NOTES

Traffic Stop for Violation of Windshield Tinting Restrictions. — The winshield-tinting restrictions are not subject to any exception for vehicles registered in other states, and it is immaterial whether a defendant's windows were tinted in compliance with Florida law; thus, a deputy had the right to stop a vehicle where he reasonably suspected that defendant violated this section. State v. Schiffer, 132 N.C. App. 22, 510 S.E.2d 165 (1999).

Cited in State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

OPINIONS OF ATTORNEY GENERAL

Federal Safety Laws Preempt State Regulation. — A state statute or regulation allowing 35% light transmittance through windows in motor vehicles would be preempted by current federal safety laws and standards regulating the same subject matter. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, — N.C.A.G. — (Dec. 18, 1987).

§ 20-128. Exhaust system and emissions control devices.

(a) No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler, or other exhaust system of the type installed at the time of manufacture, in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens.

(b) It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon a highway.

(c) No motor vehicle registered in this State that was manufactured after model year 1967 shall be operated in this State unless it is equipped with emissions control devices that were installed on the vehicle at the time the vehicle was manufactured and these devices are properly connected.

(d) The requirements of subsection (c) of this section shall not apply if the emissions control devices have been removed for the purpose of converting the motor vehicle to operate on natural or liquefied petroleum gas or other modifications have been made in order to reduce air pollution and these modifications are approved by the Department of Environment and Natural Resources. (1937, c. 407, s. 91; 1971, c. 455, s. 1; 1983, c. 132; 1989, c. 727, s. 9; 1997-443, s. 11A.119(a); 2000-134, s. 6.)

CASE NOTES

For case holding a warrant sufficient to charge violation of this section, see State v. Daughtry, 236 N.C. 316, 72 S.E.2d 658 (1952).

Cited in State v. Woolard, 260 N.C. 133, 132 S.E.2d 364 (1963); Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 20-128.1. Control of visible emissions.

(a) It shall be a violation of this Article:

(1) For any gasoline-powered motor vehicle registered and operated in this State to emit visible air contaminants under any mode of operation for longer than five consecutive seconds.

(2) For any diesel-powered motor vehicle registered and operated in this State to emit for longer than five consecutive seconds under any mode of operation visible air contaminants which are equal to or darker than the shade or density designated as No. 1 on the Ringelmann Chart or are equal to or darker than a shade or density of twenty percent (20%) opacity.

(b) Any person charged with a violation of this section shall be allowed 30 days within which to make the necessary repairs or modification to bring the motor vehicle into conformity with the standards of this section and to have the motor vehicle inspected and approved by the agency issuing the notice of violation. Any person who, within 30 days of receipt of a notice of violation, and prior to inspection and approval by the agency issuing the notice, receives additional notice or notices of violation, may exhibit a certificate of inspection and approval from the agency issuing the first notice in lieu of inspection and approval by the agencies issuing the subsequent notices.

(c) The provisions of this section shall be enforceable by all persons designated in G.S. 20-49; by all law-enforcement officers of this State within their respective jurisdictions; by the personnel of local air pollution control agencies within their respective jurisdictions; and by personnel of State air pollution control agencies throughout the State.

(d) Any person who fails to comply with the provisions of this section shall be subject to the penalties provided in G.S. 20-176. (1971, c. 1167, s. 10.)

CASE NOTES

Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 20-128.2. Motor vehicle emission standards.

(a) The rules and regulations promulgated pursuant to G.S. 143-215.107(a)(6) shall be implemented when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that the ambient air quality in an area will be improved by the implementation of a motor vehicle inspection/maintenance program within a specified county or group of counties, as necessary to effect attainment or preclude violations of the National Ambient Air Quality Standards for carbon monoxide or ozone; provided the Environmental Management Commission may prescribe different vehicle emission limits for different areas as may be necessary and appropriate to meet the stated purposes of this section.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 5. (1979, 2nd Sess., c. 1180, s. 2; 1989, c. 391, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 5.)

§ 20-129. Required lighting equipment of vehicles.

(a) When Vehicles Must Be Equipped. — Every vehicle upon a highway within this State shall be equipped with lighted headlamps and rear lamps as required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in G.S. 20-134:

(1) During the period from sunset to sunrise,

(2) When there is not sufficient light to render clearly discernible any person on the highway at a distance of 400 feet ahead, or

(3) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 822, s. 1.

(4) At any other time when windshield wipers are in use as a result of smoke, fog, rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street and highway at a distance of 500 feet ahead, provided, however, the provisions of this subdivision shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow. Any person violating this subdivision during the period from October 1, 1990, through December 31, 1991, shall be given a warning of the violation only. Thereafter, any person violating this subdivision shall have committed an infraction and shall pay a fine of five dollars ($5.00) and shall not be assessed court costs. No drivers license points, insurance points or premium surcharge shall be assessed on account of violation of this subdivision and no negligence or liability shall be assessed on or imputed to any party on account of a violation of this subdivision. The Commissioner of Motor Vehicles and the Superintendent of Public Instruction shall incorporate into driver education programs and driver licensing programs instruction designed to encourage compliance with this subdivision as an important means of reducing accidents by making vehicles more discernible during periods of limited visibility.

(b) Headlamps on Motor Vehicles. — Every self-propelled motor vehicle other than motorcycles, road machinery, and farm tractors shall be equipped with at least two headlamps, all in good operating condition with at least one on each side of the front of the motor vehicle. Headlamps shall comply with the requirements and limitations set forth in G.S. 20-131 or 20-132.

(c) Headlamps on Motorcycles. — Every motorcycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations set forth in G.S. 20-131 or 20-132. The headlamps on a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas.

(d) Rear Lamps. — Every motor vehicle, and every trailer or semitrailer attached to a motor vehicle and every vehicle which is being drawn at the end of a combination of vehicles, shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. One rear lamp or a separate lamp shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle. Every trailer or semitrailer shall carry at the rear, in addition to the originally equipped lamps, a red reflector of the type which has been approved by the Commissioner and which is so located as to height and is so maintained as to be visible for at least 500 feet when opposed by a motor vehicle displaying lawful undimmed lights at night on an unlighted highway.

Notwithstanding the provisions of the first paragraph of this subsection, it shall not be necessary for a trailer weighing less than 4,000 pounds, or a trailer described in G.S. 20-51(6) weighing less than 6,500 pounds, to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors of a diameter of not less than three inches, such reflectors to be approved by the Commissioner, and which are so designed and located as to height and are maintained so that each reflector is visible for at least 500 feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway.

The rear lamps of a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas.

(e) Lamps on Bicycles. — Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least 300 feet in front of such bicycle, and shall also be equipped with a reflex mirror or lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least 200 feet to the rear of such bicycle, when used at night.

(f) Lights on Other Vehicles. — All vehicles not heretofore in this section required to be equipped with specified lighted lamps shall carry on the left side one or more lighted lamps or lanterns projecting a white light, visible under normal atmospheric conditions from a distance of not less than 500 feet to the front of such vehicle and visible under like conditions from a distance of not less than 500 feet to the rear of such vehicle, or in lieu of said lights shall be equipped with reflectors of a type which is approved by the Commissioner. Farm tractors operated on a highway at night must be equipped with at least one white lamp visible at a distance of 500 feet from the front of the tractor and with at least one red lamp visible at a distance of 500 feet to the rear of the tractor. Two red reflectors each having a diameter of at least four inches may be used on the rear of the tractor in lieu of the red lamp.

(g) No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle, manufactured after December 31, 1955, unless it shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps. (1937, c. 407, s. 92; 1939, c. 275; 1947, c. 526; 1955, c. 1157, ss. 3-5, 8; 1957, c. 1038, s. 1; 1967, cc. 1076, 1213; 1969, c. 389; 1973, c. 531, ss. 1, 2; 1979, c. 175; 1981, c. 549, s. 1; 1985, c. 66; 1987, c. 611; 1989 (Reg. Sess., 1990), c. 822, s. 1; 1991, c. 18, s. 1; 1999-281, s. 1.)

CASE NOTES

This a safety statute enacted for the protection of persons and property. Brown v. Boren Clay Prods. Co., 5 N.C. App. 418, 168 S.E.2d 452 (1969).

Purpose of Section. — This section was enacted to minimize the hazards incident to the movement of motor vehicles upon the public roads during the nighttime. Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949).

This section was enacted for the protection of persons and property and in the interest of public safety and the preservation of human life. State v. Norris, 242 N.C. 47, 86 S.E.2d 916 (1955).

This section was enacted in the interest of public safety. Scarborough v. Ingram, 256 N.C. 87, 122 S.E.2d 798 (1961); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

Effect of § 20-161. — Section 20-161 does not conflict with nor reduce the obligation imposed on the operator of a motor vehicle stopped or parked on the highway at night to light his vehicle as required by this section and G.S. 20-134. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

What Constitutes Violation of Section. — Driving a motor vehicle without lights during the period from a half hour after sunset to a half hour before sunrise violates this section and is punishable as prescribed by § 20-176(b). State v. Eason, 242 N.C. 59, 86 S.E.2d 774 (1955).

Operating a motor vehicle on a public highway at night without lights is a violation of this section. Williamson v. Varner, 252 N.C. 446, 114 S.E.2d 92 (1960).

Proof That Street Forms Part of Highway System Required. — The provisions of this section are not applicable to defendants' truck parked or stopped on a street in the city when plaintiff has neither allegation nor proof to show that the street forms a part of the State highway system. Coleman v. Burris, 265 N.C. 404, 144 S.E.2d 241 (1965).

Violation as Negligence. — Williamson v. Varner, 252 N.C. 446, 114 S.E.2d 92 (1960); Correll v. Gaskins, 263 N.C. 212, 139 S.E.2d 202 (1964); Faison v. T & S Trucking Co., 266 N.C. 383, 146 S.E.2d 450 (1966); McNulty v. Chaney, 1 N.C. App. 610, 162 S.E.2d 90 (1968); Brown v. Boren Clay Prods. Co., 5 N.C. App. 418, 168 S.E.2d 452 (1969); Hardison v. Williams, 21 N.C. App. 670, 205 S.E.2d 551 (1974).

Violation of this section constitutes negligence as a matter of law. Scarborough v. Ingram, 256 N.C. 87, 122 S.E.2d 798 (1961); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967); Bigelow v. Johnson, 49 N.C. App. 40, 270 S.E.2d 503 (1980), rev'd on other grounds, 303 N.C. 126, 277 S.E.2d 347 (1981).

One who operates a vehicle at night without lights, or with improper lights, is negligent. Reeves v. Campbell, 264 N.C. 224, 141 S.E.2d 296 (1965).

Operation of a tractor-trailer on the highways at night without burning the rear and clearance lights required by this section is negligence per se. Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949).

Riding a bicycle on the highway at night without a lamp of any kind on the front thereof is a violation of this section and is negligence per se. Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963). See also Miller v. Enzor, 17 N.C. App. 510, 195 S.E.2d 86, cert. denied, 283 N.C. 393, 196 S.E.2d 276 (1973).

The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983), cert. denied, 311 N.C. 766, 321 S.E.2d 150 (1984).

Violation as Misdemeanor. — Violation of this section is a misdemeanor under G.S. 20-176. Williamson v. Varner, 252 N.C. 446, 114 S.E.2d 92 (1960).

Lights on Motor Vehicles Serve Two Purposes. — The lights required by this section serve two purposes: (1) To enable the operator of the automobile to see what is ahead of him; and (2) to inform others of the approach of the automobile. Reeves v. Campbell, 264 N.C. 224, 141 S.E.2d 296 (1965); Bigelow v. Johnson, 49 N.C. App. 40, 270 S.E.2d 503 (1980), 303 N.C. 126, 277 S.E.2d 347 (1981).

The function of a front light or headlight, defined by this section and G.S. 20-131, is to produce a driving light sufficient, under normal atmospheric conditions, to enable the operator to see a person 200 feet ahead. O'Berry v. Perry, 266 N.C. 77, 145 S.E.2d 321 (1965); Miller v. Wright, 272 N.C. 666, 158 S.E.2d 824 (1968).

The adequacy of headlights upon a motor vehicle, in normal atmospheric conditions, is determined by this section and G.S. 20-131. Miller v. Wright, 272 N.C. 666, 158 S.E.2d 824 (1968).

Meaning of "Headlamp" Under Subsection (c). — The legislature intended that a "headlamp" within the contemplation of subsection (c) of this section and G.S. 20-131 should be one that was specifically designed and constructed for use as a headlamp, and a five-cell flashlight attached to a motorcycle falls short of the headlamp requirement. Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

Although subsection (c) of this section and G.S. 20-131(a) do not contain a specific definition of a "headlamp," the legislature's use of the term "headlamp" indicates that not just any light source possessing the requisite brightness will suffice. Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

This section does not provide for headlamp substitutes, however powerful or reasonable. Bigelow v. Johnson, 49 N.C. App. 40, 270 S.E.2d 503 (1980), rev'd on other grounds, 303 N.C. 126, 277 S.E.2d 347 (1981).

Opportunity to Observe Whether Headlamps Were On. — Testimony of the plaintiff that she stopped at an intersection, looked both ways, and did not see lights coming from either direction, was evidence from which the jury could conclude that defendant approached the intersection without lights, since the plaintiff had adequate opportunity to observe whether headlights were on. McLean v. Henderson, 45 N.C. App. 707, 264 S.E.2d 120 (1980).

Purpose of Front Lamp on Bicycle. — Subsection (e) of this section, relating to front lamps on bicycles, is designed for the benefit of those approaching a bicycle from the front and for the protection of the bicyclist. Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Purpose of Red Reflector on Bicycle. — The red reflector required under subsection (e) of this section is designed to protect the bicyclist from vehicles approaching from the rear and to give notice to such vehicles of the presence of the bicycle ahead. Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Intensity of Light Under Subsection (e). — Subsection (e) of this section in no way requires a light of such intensity as to render objects visible along the highway in front of the bicycle. Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Bicycle Being Carried by Pedestrian. — Where plaintiff's evidence was to the effect that at nighttime he was carrying a child's bicycle, too small for him to ride, across a street intersection to a repair shop, and that he was hit by a vehicle entering the intersection against the stoplight at a high rate of speed, refusal to give defendant's requested instruction that failure to have a light on the bicycle was a violation of this section was not error, since under the circumstances plaintiff was a pedestrian rather than a cyclist. Holmes v. Blue Bird Cab, Inc., 227 N.C. 581, 43 S.E.2d 71 (1947).

Absence of Front Lamp on Bicycle Not Proximate Cause of Rear-End Collision. — Where plaintiff's evidence failed to show that his bicycle was equipped with a lighted lamp on the front thereof, but did show that he had a reflecting mirror on its rear, and that plaintiff's bicycle was hit from the rear by a car operated by defendant, and there was no evidence that if the bicycle had been equipped with a front lamp the lamp would have been visible to a person approaching in an automobile from the rear of the bicycle, the only legitimate inference was that the absence of a lighted lamp on the front of the bicycle was not a proximate or contributing proximate cause of the collision, and the court could properly charge the jury to this effect. Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Parking on highway without lights 40 minutes before sunrise is unlawful. Smith v. Nunn, 257 N.C. 108, 125 S.E.2d 351 (1962).

Lights on Disabled Vehicle. — A tractor-trailer standing on the paved portion of a highway at nighttime is required to have the rear and clearance lights burning as provided by this section, regardless of whether or not the vehicle is disabled within the meaning of G.S. 20-161(c). Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949).

It is negligence to permit a disabled bus to stand on a highway at night without lights, blocking a lane of traffic, without giving warning to approaching vehicles. Dezern v. Asheboro City Bd. of Educ., 260 N.C. 535, 133 S.E.2d 204 (1963).

Negligence in Driving School Bus Without Clearance Lights. — Instruction that defendant would be chargeable with negligence if he drove a school bus having a width in excess of 80 inches on the highway during the nighttime without displaying burning clearance lights thereon as required by this section, was correct, even though the duty to keep the lighting system on the vehicle in good working order may have rested on defendant's employer and not on defendant, as the latter was not empowered to set a positive statute at naught merely because his employer furnished him a vehicle with a defective lighting system. Hansley v. Tilton, 234 N.C. 3, 65 S.E.2d 300 (1951).

Right of Motorist to Assume That Other Vehicle Will Display Lights. — A motorist has the right to act upon the assumption that no other motorist will permit a motor vehicle either to move or to stand on the highway without displaying thereon the lights required by this section and § 20-134, until he has notice to the contrary. Chaffin v. Brame, 233 N.C. 377, 64 S.E.2d 276 (1951); United States v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953); Towe v. Stokes, 117 F. Supp. 880 (M.D.N.C.), aff'd, 214 F.2d 563 (4th Cir. 1954).

Until he saw, or by the exercise of due care should have seen, the approach of defendant's car, plaintiff was entitled to assume and to act upon the assumption that no motorist would be traveling without lights in violation of this section. White v. Lacey, 245 N.C. 364, 96 S.E.2d 1 (1957).

Whether Obstruction Should Have Been Seen Is Jury Question. — Generally speaking, where the statutes, as this section, or the decisions of the courts, require red lights as a warning of danger on any object in the highway and such lights are not present, it is a question for the jury to determine whether the driver at night should have seen the obstruction, notwithstanding the absence of red lights. Morris v. Sells-Floto Circus, Inc., 65 F.2d 782 (4th Cir. 1933).

Defendant was held entitled to an instruction, even in the absence of a request therefor, that if the jury found by the greater weight of the evidence that plaintiff stopped his car and permitted it to stand, without lights, on the paved portion of the road in defendant's right lane of travel, such conduct on the part of plaintiff would constitute negligence as a matter of law, and that if the jury found by the greater weight of the evidence that such negligence was a proximate cause of the collision and plaintiff's injuries, the jury was to answer the contributory negligence issue, "Yes." Correll v. Gaskins, 263 N.C. 212, 139 S.E.2d 202 (1964).

Negligence in not having a light on the rear of a truck will not preclude recovery against one who drove his car into the truck, unless it contributed to the injury. Hughes v. Luther, 189 N.C. 841, 128 S.E. 145 (1925).

Plaintiff's Recovery Held Barred by Contributory Negligence. — Where plaintiff's evidence tended to show that he was driving at night along a highway covered with smoke from fires along its side and that he collided with the rear of an oil truck which was headed in the same direction and which had been stopped on the highway without rear lights in violation of this section, it was held that, conceding negligence on the part of defendant, plaintiff's evidence disclosed contributory negligence barring recovery as a matter of law, either in driving at a speed in excess of that at which he could stop within the distance to which his lights would disclose the existence of obstructions, or, if he could have seen the oil truck in time to have avoided a collision, in failing to do so. Sibbitt v. R. & W. Transit Co., 220 N.C. 702, 18 S.E.2d 203 (1942).

Evidence Held Sufficient for Jury. — Evidence tending to show that the headlights on defendant's car were defective, that he was driving at a speed of 60 to 65 miles an hour and that, in a sudden effort to avoid colliding with another automobile which had been backed into the highway and which was apparently not in motion at the time, defendant drove off the road, causing the car to overturn, and inflicting serious injury to plaintiff, a guest in the car, required submission of the case to the jury. Stewart v. Stewart, 221 N.C. 147, 19 S.E.2d 242 (1942).

Evidence that car in which plaintiff was riding as a guest struck defendant's trailer, which was standing across the highway in the car's lane of traffic, and that the trailer did not have burning the lights required by this section, was sufficient to overrule defendant's motion to nonsuit and motion for a directed verdict in its favor on the issue of negligence, since the question of proximate cause under the evidence is for the jury. Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949).

For evidence showing violation of section, see Powell v. Lloyd, 234 N.C. 481, 67 S.E.2d 664 (1951); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

Applied in McKinnon v. Howard Motor Lines, 228 N.C. 132, 44 S.E.2d 735 (1947); Pascal v. Burke Transit Co., 229 N.C. 435, 50 S.E.2d 534 (1948); Gantt v. Hobson, 240 N.C. 426, 82 S.E.2d 384 (1954) (as to subsection (d)); Punch v. Landis, 258 N.C. 114, 128 S.E.2d 224 (1962); Griffin v. Watkins, 269 N.C. 650, 153 S.E.2d 356 (1967); Williamson v. McNeill, 8 N.C. App. 625, 175 S.E.2d 294 (1970).

Cited in Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384 (1939); Pike v. Seymour, 222 N.C. 42, 21 S.E.2d 884 (1942); Morris v. Jenrette Transp. Co., 235 N.C. 568, 70 S.E.2d 845 (1952); Morgan v. Cook, 236 N.C. 477, 73 S.E.2d 296 (1952); Hollifield v. Everhart, 237 N.C. 313, 74 S.E.2d 706 (1953); Smith v. City of Kinston, 249 N.C. 160, 105 S.E.2d 648 (1958); Meece v. Dickson, 252 N.C. 300, 113 S.E.2d 578 (1960); Smith v. Goldsboro Iron & Metal Co., 257 N.C. 143, 125 S.E.2d 377 (1962); State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965); C & H Transp. Co. v. North Carolina DMV, 34 N.C. App. 616, 239 S.E.2d 309 (1977); State v. Stewart, 40 N.C. App. 693, 253 S.E.2d 638 (1979); Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283 (1981); Mobley v. Hill, 80 N.C. App. 79, 341 S.E.2d 46 (1986); State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

OPINIONS OF ATTORNEY GENERAL

All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

(1) On every bus or truck, whatever its size, there shall be the following:
On the rear, two reflectors, one at each side, and one stoplight.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subdivision (1):
On the front, two clearance lamps, one at each side.
On the rear, two clearance lamps, one at each side.
On each side, two side marker lamps, one at or near the front and one at or near the rear.
On each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:
On the front, two clearance lamps, one at each side.
On the rear, one stoplight.

(4) On every trailer or semitrailer having a gross weight of 4,000 pounds or more:
On the front, two clearance lamps, one at each side.
On each side, two side marker lamps, one at or near the front and one at or near the rear.
On each side, two reflectors, one at or near the front and one at or near the rear.
On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.

(5) On every pole trailer having a gross weight of 4,000 pounds or more:
On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.
On the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:
On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.

(7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(9) Brake lights (and/or brake reflectors) on the rear of a motor vehicle shall have red lenses so that the light displayed is red. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.

(10) On every trailer and semitrailer which is 30 feet or more in length and has a gross weight of 4,000 pounds or more, one combination marker lamp showing amber and mounted on the bottom side rail at or near the center of each side of the trailer. (1955, c. 1157, s. 4; 1969, c. 387; 1983, c. 245; 1987, c. 363, s. 1; 2000-159, s. 10.)

CASE NOTES

This section was enacted in the interest of public safety. Scarborough v. Ingram, 256 N.C. 87, 122 S.E.2d 798 (1961); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

Violation of this section constitutes negligence as a matter of law. Scarborough v. Ingram, 256 N.C. 87, 122 S.E.2d 798 (1961); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

Applied in Smith v. Goldsboro Iron & Metal Co., 257 N.C. 143, 125 S.E.2d 377 (1962).

Cited in Atkins v. Moye, 277 N.C. 174, 176 S.E.2d 729 (1970); Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283 (1981).

§ 20-129.2. Lighting equipment for mobile homes.

Notwithstanding the provisions of G.S. 20-129 and 20-129.1, the lighting equipment required to be provided and equipped on a house trailer, mobile home, modular home, or structural component thereof shall be as designated by the Commissioner of Motor Vehicles and from time to time promulgated by regulation of the Division. (1975, c. 716, s. 5; c. 833, s. 1.)

§ 20-130. Additional permissible light on vehicle.

(a) Spot Lamps. — Any motor vehicle may be equipped with not to exceed two spot lamps, except that a motorcycle shall not be equipped with more than one spot lamp, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than 100 feet ahead of the vehicle. No spot lamps shall be used on the rear of any vehicle.

(b) Auxiliary Driving Lamps. — Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in G.S. 20-131, subsection (c).

(c) Restrictions on Lamps. — Any device, other than headlamps, spot lamps, or auxiliary driving lamps, which projects a beam of light of an intensity greater than 25 candlepower, shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than 50 feet from the vehicle.

(d) Electronically Modulated Headlamps. — Nothing contained in this Chapter shall prohibit the use of electronically modulated headlamps on motorcycles, law-enforcement and fire department vehicles, county fire marshals and Emergency Management coordinators, public and private ambulances, and rescue squad emergency service vehicles, provided such headlamps and light modulator are of a type or kind which have been approved by the Commissioner of Motor Vehicles.

(e) High Mounted Flashing Deceleration Lamps. — Public transit vehicles may be equipped with amber, high mounted, flashing deceleration lamps on the rear of the vehicle. (1937, c. 407, s. 93; 1977, c. 104; 1989, c. 770, s. 7; 2004-82, s. 1.)

CASE NOTES

Applied in Bigelow v. Johnson, 49 N.C. App. 40, 270 S.E.2d 503 (1980).

§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;
(2) A highway patrol car;
(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
(4) An ambulance;
(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for transplantation;
(6) A fire-fighting vehicle;
(7) A school bus;
(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;
(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
(10) A vehicle operated by medical doctors or anesthetists in emergencies;
(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;
(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;
(13) A light required by the Federal Highway Administration;
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;
(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and
(16) A State emergency management vehicle.

(c) It is unlawful for any person to possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means any forward facing blue light installed on a vehicle after initial manufacture of the vehicle; or an operable blue light which:

(1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;

(1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(c1) The provisions of subsection (c) of this section do not apply to the possession and installation of an inoperable blue light on a vehicle that is inspected by and registered with the Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for participation in shows, exhibitions, parades, or holiday/weekend activities, and not for general daily transportation. For purposes of this subsection, "inoperable blue light" means a blue-colored lamp housing or cover that does not contain a lamp or other mechanism having the ability to produce or emit illumination.

(d) Repealed by Session Laws 1999-249, s. 1.

(e) Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1; 1971, c. 1214; 1977, c. 52, s. 2; c. 438, s. 2; 1979, c. 653, s. 1; c. 887; 1983, c. 32, s. 1; c. 768, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 50; 1989, c. 537, s. 2; 1989 (Reg. Sess., 1990), c. 1020, s. 2; 1991, c. 263, s. 1; 1993, c. 539, s. 361; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 719, s. 1; 1995, c. 168, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 16; 1999-249, s. 1; 2005-152, s. 1; 2009-526, s. 1; 2009-550, s. 3.)

Local Modification. — Macon: 1985, c. 231.

Editor's Note. — Subsections (a) and (c), as amended by Session Laws 2005-152, s. 1, effective December 1, 2005, are applicable to offenses committed on or after that date.

Effect of Amendments. — Session Laws 2009-526, s. 1, effective August 26, 2009, added subsection (c1).

Session Laws 2009-550, s. 3, effective August 28, 2009, also added subsection (c1).

CASE NOTES

Application of Section to Vehicles Operated at Time Lights Are Required. — While this section declares that it shall be unlawful to display red lights visible in front of a vehicle, it may be fairly assumed that the General Assembly intended the section to apply to vehicles operated at the time when lights are required, as provided in G.S. 20-129. Hollifield v. Everhart, 237 N.C. 313, 74 S.E.2d 706 (1953).

§ 20-130.2. Use of amber lights on certain vehicles.

All wreckers operated on the highways of the State shall be equipped with an amber-colored flashing light which shall be so mounted and located as to be clearly visible in all directions from a distance of 500 feet, which light shall be activated when at the scene of an accident or recovery operation and when towing a vehicle which has a total outside width exceeding 96 inches or which exceeds the width of the towing vehicle. It shall be lawful to equip any other vehicle with a similar warning light including, but not by way of limitation, maintenance or construction vehicles or equipment of the Department of

Transportation engaged in performing maintenance or construction work on the roads, maintenance or construction vehicles of any person, firm or corporation, Radio Emergency Associated Citizens Team (REACT) vehicles, and any other vehicles required to contain a warning light. (1967, c. 651, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1979, c. 1; c. 765; 1981, c. 390; 1991, c. 44, s. 1.)

CASE NOTES

Cited in Leisure Prods., Inc. v. Clifton, 44 N.C. App. 233, 260 S.E.2d 803 (1979).

§ 20-130.3. Use of white or clear lights on rear of vehicles prohibited; exceptions.

It shall be unlawful for any person to willfully drive a motor vehicle in forward motion upon the highways of this State displaying white or clear lights on the rear of said vehicle. The provisions of this section shall not apply to the white light required by G.S. 20-129(d) or so-called backup lights lighted only when said vehicle is in reverse gear or backing. Violation of this section does not constitute negligence per se in any civil action. (1973, c. 1071.)

§ 20-131. Requirements as to headlamps and auxiliary driving lamps.

(a) The headlamps of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (c) of this section, they will at all times mentioned in G.S. 20-129, and under normal atmospheric conditions and on a level road, produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but any person operating a motor vehicle upon the highways, when meeting another vehicle, shall so control the lights of the vehicle operated by him by shifting, depressing, deflecting, tilting, or dimming the headlight beams in such manner as shall not project a glaring or dazzling light to persons within a distance of 500 feet in front of such headlamp. Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

(b) Headlamps shall be deemed to comply with the foregoing provisions prohibiting glaring and dazzling lights if none of the main bright portion of the headlamp beams rises above a horizontal plane passing through the lamp centers parallel to the level road upon which the loaded vehicle stands, and in no case higher than 42 inches, 75 feet ahead of the vehicle.

(c) Whenever a motor vehicle is being operated upon a highway, or portion thereof, which is sufficiently lighted to reveal a person on the highway at a distance of 200 feet ahead of the vehicle, it shall be permissible to dim the headlamps or to tilt the beams downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps, subject to the restrictions as to tilted beams and auxiliary driving lamps set forth in this section.

(d) Whenever a motor vehicle meets another vehicle on any highway it shall be permissible to tilt the beams of the headlamps downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps subject to the requirement that the tilted headlamps or auxiliary lamp or lamps shall give sufficient illumination under normal atmospheric conditions and on a level road to render clearly discernible a person 75 feet ahead, but shall not project a glaring or dazzling light to persons in front of the vehicle: Provided, that at all times required in G.S. 20-129 at least two lights shall be displayed on the front of and on opposite sides of every motor vehicle other than a motorcycle, road roller, road machinery, or farm tractor.

(e) No city or town shall enact an ordinance in conflict with this section. (1937, c. 407, s. 94; 1939, c. 351, s. 1; 1955, c. 1157, ss. 6, 7.)

Cross References. — As to failure to dim headlights not being cause for suspension or revocation of driver's license, see § 20-18. As to penalties imposed for failure to dim headlights, see § 20-181.

CASE NOTES

Requirements of Subsection (a) and § 20-129(e) Distinguished. — The requirement of subsection (e) of § 20-129 is entirely different from the requirement for motor vehicles, when used at night, as set forth in subsection (a) of this section. Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Meaning of "Headlamp." — The legislature intended that a "headlamp" within the contemplation of G.S. 20-129(c) and this section should be one that was specifically designed and constructed for use as a headlamp, and a five-cell flashlight attached to a motorcycle falls short of the headlamp requirement. Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

Although G.S. 20-129(c) and subsection (a) of this section do not contain a specific definition of a "headlamp," the legislature's use of the term "headlamp" indicates that not just any light source possessing the requisite brightness will suffice. Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

The function of a front light or headlight, defined by § 20-129 and this section, is to produce a driving light sufficient, under normal atmospheric conditions, to enable the operator to see a person 200 feet ahead. O'Berry v. Perry, 266 N.C. 77, 145 S.E.2d 321 (1965); Miller v. Wright, 272 N.C. 666, 158 S.E.2d 824 (1968).

The function of a parking light is to enable a vehicle parked or stopped upon the highway to be seen under similar conditions from a distance of 500 feet to the front of such vehicle. O'Berry v. Perry, 266 N.C. 77, 145 S.E.2d 321 (1965).

The adequacy of headlights upon a motor vehicle, in normal atmospheric conditions, is determined by this section and G.S. 20-129. Miller v. Wright, 272 N.C. 666, 158 S.E.2d 824 (1968).

Permissibility of Dimming Lights for Better Visibility. — The duty of a motorist to dim or deflect his headlights is not restricted by this section solely to instances in which he is meeting oncoming traffic, since this section refers to "normal atmospheric conditions"; therefore, it may be permissible for a motorist to deflect his headlights when driving in fog or other atmospheric conditions in which deflected headlights afford better visibility. Short v. Chapman, 261 N.C. 674, 136 S.E.2d 40 (1964).

Persons Lying or Sleeping on Highway. — As the law does not require a motorist to anticipate that a person may be lying or sleeping on the travelled portion of the highway, this statute does not require that persons lying or sleeping on the highway be rendered clearly discernible as human beings by motor vehicle headlights. Sink v. Sumrell, 41 N.C. App. 242, 254 S.E.2d 665 (1979).

Plaintiffs' Recovery Held Barred by Contributory Negligence. — In an action for damages due to negligence of defendants, where the evidence showed that plaintiffs, on a joint enterprise, driving their car about 2:00 A. M., at 40 or 45 miles per hour, with lights dimmed so that they could not see ahead over 75 to 100 feet, never applied the brakes and failed to see defendants' truck until after the collision, crashing into the back of the truck with terrific force, plaintiffs were guilty of contributory negligence which was a proximate cause of the accident, thereby barring their recovery. Pike v. Seymour, 222 N.C. 42, 21 S.E.2d 884 (1942).

Duty of Driver Is Not Merely to Look But to Keep Lookout. — It is the duty of the driver of a motor vehicle not merely to look, but to keep a lookout, in the direction of travel, and he is held to the duty of seeing what he ought to have seen. When a motorist travels into a completely blinded area for two or three seconds, with the knowledge that his vision has failed him, such behavior will be contributory negligence as a matter of law. Williams v. Hall, 100 N.C. App. 655, 397 S.E.2d 767 (1990).

Directed verdict on issue of contributory negligence was improper where plaintiff testified that he was not completely blinded by the oncoming headlights as he approached the tractor-trailer and he could see much more than the edge of the road; the plaintiff may have been keeping a proper lookout without realizing that he was partially blinded only as to the area beyond the tractor-trailers' headlights. In such a deceptive visual situation, the plaintiff may not have knowingly driven into the blinded area, for it would have appeared as though he could see into the distant darkness. From the evidence there was insufficient evidence to establish that plaintiff was contributorily negligent as a matter of law. Williams v. Hall, 100 N.C. App. 655, 397 S.E.2d 767 (1990).

Jury Question. — Whether or not defendant knew or should have known that the position of his cab and lights could blind oncoming drivers was a question for the jury. Williams v. Hall, 100 N.C. App. 655, 397 S.E.2d 767 (1990).

Applied in Cronenberg v. United States, 123 F. Supp. 693 (E.D.N.C. 1954); Williamson v. McNeill, 8 N.C. App. 625, 175 S.E.2d 294 (1970).

Cited in Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384 (1939); Singletary v. Nixon, 239 N.C. 634, 80 S.E.2d 676 (1954); as to subsections (a) and (d), in Keener v. Beal, 246 N.C. 247, 98 S.E.2d 19 (1957); Smith v. City of Kinston, 249 N.C. 160, 105 S.E.2d 648 (1958); Meeks v. Atkeson, 7 N.C. App. 631, 173 S.E.2d 509 (1970); Schaefer v. Wickstead, 88 N.C. App. 468, 363 S.E.2d 653 (1988).

§ 20-132. Acetylene lights.

Motor vehicles eligible for a Historic Vehicle Owner special registration plate under G.S. 20-79.4 may be equipped with two acetylene headlamps of approximately equal candlepower when equipped with clear plane-glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers. (1937, c. 407, s. 95; 1995, c. 379, s. 18.1.)

§ 20-133. Enforcement of provisions.

(a) The Commissioner is authorized to designate, furnish instructions to and to supervise official stations for adjusting headlamps and auxiliary driving lamps to conform with the provisions of G.S. 20-129. When headlamps and auxiliary driving lamps have been adjusted in conformity with the instructions issued by the Commissioner, a certificate of adjustment shall be issued to the driver of the motor vehicle on forms issued in duplicate by the Commissioner and showing date of issue, registration number of the motor vehicle, owner's name, make of vehicle and official designation of the adjusting station.

(b) The driver of any motor vehicle equipped with approved headlamps, auxiliary driving lamps, rear lamps or signal lamps, who is arrested upon a charge that such lamps are improperly adjusted or are equipped with bulbs of a candlepower not approved for use therewith, shall be allowed 48 hours within which to bring such lamps into conformance with the requirements of this Article. It shall be a defense to any such charge that the person arrested produce in court or submit to the prosecuting attorney a certificate from an official adjusting station showing that within 48 hours after such arrest such lamps have been made to conform with the requirements of this Article. (1937, c. 407, s. 96.)

§ 20-134. Lights on parked vehicles.

(a) Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in G.S. 20-129, there shall be displayed upon such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of 500 feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of 200 feet upon such highway.

(b) A motor vehicle operated on a highway by a rural letter carrier or by a newspaper delivery person shall be equipped and operated with flashing amber lights at any time the vehicle is being used in the delivery of mail or newspapers, regardless of whether the vehicle is attended or unattended. (1937, c. 407, s. 97; 1959, c. 1264, s. 9; 1995 (Reg. Sess., 1996), c. 715, s. 1.)

CASE NOTES

Purpose of Section. — This section is designed to promote safe use of the public highways. Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1963).

Effect of § 20-161. — Section 20-161 does not conflict with nor reduce the obligation imposed on the operator of a motor vehicle stopped or parked on the highway at night to light his vehicle as required by this section and G.S. 20-129. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

This section is inapplicable to a motor vehicle parked in a residential district in a city or town on a street which constitutes no part of the highway system. Smith v. Goldsboro Iron & Metal Co., 257 N.C. 143, 125 S.E.2d 377 (1962).

The provisions of this section are not applicable to defendants' truck parked or stopped on a street in the city when plaintiff has neither allegation nor proof to show that the street forms a part of the State highway system. Coleman v. Burris, 265 N.C. 404, 144 S.E.2d 241 (1965).

The function of a parking light is to enable a vehicle parked or stopped upon the highway to be seen under similar conditions from a distance of 500 feet to the front of such vehicle. O'Berry v. Perry, 266 N.C. 77, 145 S.E.2d 321 (1965).

Right of Motorist to Assume That Other Vehicle Will Display Lights. — A motorist has the right to act upon the assumption that no other motorist will permit a motor vehicle either to move or to stand on the highway without displaying thereon the lights required by this section and G.S. 20-129, until he has notice to the contrary. Chaffin v. Brame, 233 N.C. 377, 64 S.E.2d 276 (1951); United States v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953); Towe v. Stokes, 117 F. Supp. 880 (M.D.N.C.), aff'd, 214 F.2d 563 (4th Cir. 1954).

A violation of this section is negligence per se. Correll v. Gaskins, 263 N.C. 212, 139 S.E.2d 202 (1964); Faison v. T & S Trucking Co., 266 N.C. 383, 146 S.E.2d 450 (1966); Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967); King v. Allred, 60 N.C. App. 380, 299 S.E.2d 248, rev'd on other grounds, 309 N.C. 113, 305 S.E.2d 554 (1983).

Parking on a paved highway at night, without flares or other warning, is negligence. Allen v. Dr. Pepper Bottling Co., 223 N.C. 118, 25 S.E.2d 388 (1943).

But it is not necessarily unlawful in all cases to park a vehicle at night on the paved portion of a highway without lights thereon, as an emergency may arise thereby making it impossible to move such vehicle immediately. Pike v. Seymour, 222 N.C. 42, 21 S.E.2d 884 (1942).

It was negligence to permit a disabled bus to stand on a highway at night without lights, blocking a lane of traffic, without giving warning to approaching vehicles. Dezern v. Asheboro City Bd. of Educ., 260 N.C. 535, 133 S.E.2d 204 (1963).

Leaving a disabled marine corps wrecker standing on the highway in the nighttime without the lights and warning signals required by this section and § 20-161 constituted negligence. United States v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953).

Proximate Cause as a Jury Question. — It is for the jury to decide whether, upon the evidence, a violation of this statute was a proximate cause of decedent's injuries. Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

The parking of a truck on a public highway at night without lights in violation of the statute is negligence per se, and the question of proximate cause is for the determination of the jury. Barrier v. Thomas & Howard Co., 205 N.C. 425, 171 S.E. 626 (1933), decided under corresponding section of former law.

Evidence Held Sufficient for Submission to Jury. — Evidence that the driver of a car left the vehicle standing unattended without lights at nighttime, partially on the hard surface, and that plaintiff was unable to stop before striking the rear of the vehicle when he first saw it upon resuming his bright lights after dimming his lights in response to oncoming traffic, was sufficient to be submitted to the jury on the issue of negligence. Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1963).

Defendant was entitled to an instruction, even in the absence of a request therefor, that if the jury found by the greater weight of the evidence that plaintiff stopped his car and permitted it to stand, without lights, on the paved portion of the road in defendant's right lane of travel, such conduct on the part of the plaintiff would constitute negligence as a matter of law, and that if the jury find by the greater weight of the evidence that such negligence was a proximate cause of the collision and plaintiff's injuries, the jury should answer the contributory negligence issue, "Yes." Correll v. Gaskins, 263 N.C. 212, 139 S.E.2d 202 (1964).

Applied in Bumgardner v. Allison, 238 N.C. 621, 78 S.E.2d 752 (1953); Kinsey v. Town of Kenly, 263 N.C. 376, 139 S.E.2d 686 (1965); King v. Allred, 309 N.C. 113, 305 S.E.2d 554 (1983); State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983).

Cited in McKinnon v. Howard Motor Lines, 228 N.C. 132, 44 S.E.2d 735 (1947); Keener v. Beal, 246 N.C. 247, 98 S.E.2d 19 (1957); Vann v. Hayes, 266 N.C. 713, 147 S.E.2d 186 (1966); Puryear v. Cooper, 2 N.C. App. 517, 163 S.E.2d 299 (1968); Brown v. Boren Clay Prods. Co., 5 N.C. App. 418, 168 S.E.2d 452 (1969); Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970); McNair v. Boyette, 282 N.C. 230, 192 S.E.2d 457 (1972); Williamson v. Basinger, 30 N.C. App. 50, 226 S.E.2d 213 (1976); Thomas v. Deloatch, 45 N.C. App. 322, 263 S.E.2d 615 (1980).

§ 20-135. Safety glass.

(a) It shall be unlawful to operate knowingly, on any public highway or street in this State, any motor vehicle which is registered in the State of North Carolina and which shall have been manufactured or assembled on or after January 1, 1936, unless such motor vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields, wings or partitions; or for a dealer to sell a motor vehicle manufactured or assembled on or after January 1, 1936, for operation upon the said highways or streets unless it be so equipped. The provisions of this Article shall not apply to any motor vehicle if such motor vehicle shall have been registered previously in another state by the owner while the owner was a bona fide resident of said other state.

(b) The term "safety glass" as used in this Article shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by glass when the glass is cracked or broken.

(c) The Division of Motor Vehicles shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this Article, and in accordance with standards recognized by the United States Bureau of Standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this Article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(d) Repealed by Session Laws 1985, c. 764, s. 26. (1937, c. 407, s. 98; 1941, c. 36; 1975, c. 716, s. 5; 1985, c. 764, s. 26; 1985 (Reg. Sess., 1986), c. 852, s. 17.)

§ 20-135.1: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 30.

§ 20-135.2. Safety belts and anchorages.

(a) Every new motor vehicle registered in this State and manufactured, assembled, or sold after January 1, 1964, shall, at the time of registration, be equipped with at least two sets of seat safety belts for the front seat of the motor vehicle. Such seat safety belts shall be of such construction, design, and strength to support a loop load strength of not less than 5,000 pounds for each belt, and must be of a type approved by the Commissioner.

This subsection shall not apply to passenger motor vehicles having a seating capacity in the front seat of less than two passengers.

(b) After July 1, 1962, no seat safety belt shall be sold for use in connection with the operation of a motor vehicle on any highway of this State unless it shall be constructed and installed as to have a loop strength through the complete attachment of not less than 5,000 pounds and the buckle or closing device shall be of such construction and design that after it has received the aforesaid loop belt load it can be released with one hand with a pull of less than 45 pounds.

(c) The provisions of this section shall apply only to passenger vehicles of nine-passenger capacity or less, except motorcycles. (1961, c. 1076; 1963, c. 288.)

CASE NOTES

No Statutory Duty to Use Seat Belts. — Seat belt enactments are not absolute safety measures, and no statutory duty to use the belts can be implied from them. Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968).

Failure of a guest passenger to use an available seat belt does not constitute contributory negligence barring recovery by the passenger for personal injuries received in an automobile accident caused by defendant driver's negligence. Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968).

Nor Does It Invoke Doctrine of Avoidable Consequences. — The doctrine of avoidable consequences is not invoked by the failure of plaintiff guest passenger to use an available seat belt, since the failure to fasten the seat belt occurs before defendant's negligence. Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968).

Applied in Calloway v. Ford Motor Co., 281 N.C. 496, 189 S.E.2d 484 (1972).

§ 20-135.2A. (See Editor's note) Seat belt use mandatory.

(a) Except as otherwise provided in G.S. 20-137.1, each occupant of a motor vehicle manufactured with seat belts shall have a seatbelt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State.

(b) Repealed by Session Laws 2006-140, s. 1, effective December 1, 2006.

(c) This section shall not apply to any of the following:

(1) A driver or occupant of a noncommercial motor vehicle with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints.

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route.

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour.

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural purposes in intrastate commerce.

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(6) Any occupant of a motor home, as defined in G.S. 20-4.01(27)d2, other than the driver and front seat passengers.

(7) Any occupant, while in the custody of a law enforcement officer, being transported in the backseat of a law enforcement vehicle.

(8) A passenger of a residential garbage or recycling truck while the truck is operating during collection rounds.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(d1) Failure of a rear seat occupant of a vehicle to wear a seat belt shall not be justification for the stop of a vehicle.

(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars and fifty cents ($25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ten dollars ($10.00) and no court costs. Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) Repealed by Session Laws 1999-183, s. 3, effective October 1, 1999. (1985, c. 222, s. 1; 1987, c. 623; 1991, c. 448, s. 1; 1994, Ex. Sess., c. 5, s. 1; 1997-16, s. 2; 1997-443, s. 32.20; 1999-183, ss. 1-3; 2002-126, s. 29A.3(a); 2005-276, s. 43.1(g); 2006-66, s. 21.11; 2006-140, s. 1; 2006-221, s. 21(a); 2007-289, s. 1; 2007-404, s. 2; 2009-376, s. 12; 2009-451, s. 15.20(j).)

Editor's Note. — Session Laws 1985, c. 222, s. 2 makes this section effective October 1, 1985. Section 2 further provides that the act shall cease to be effective if, and upon such date as, a final determination by lawful authority is made that the North Carolina law on mandatory safety belt usage does not meet the minimum criteria established by the United States Department of Transportation for State mandatory safety belt usage laws necessary to rescind the federal rule requiring automobile manufacturers to phase in automatic occupant restraints in automobiles.

Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Session Laws 2002-126, s. 29A.3(b), which rewrote subsection (e), provides: "This section becomes effective October 1, 2002, and applies to all costs assessed or collected on or after that date, except that in cases disposed of on or after that date by written appearance, waiver of trial or hearing, or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, no costs shall be assessed."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2006-140, s. 2, provides: "This act becomes effective December 1, 2006, and applies to offenses committed on or after that date. Law enforcement agencies shall issue only warnings for violations of this act with regards to backseat passengers in motor vehicles from December 1, 2006, to June 30, 2007. On July 1, 2007, law enforcement agencies may begin issuing citations or taking other enforcement action, for violations of this act with regards to backseat passengers. Front seat passengers not in compliance with this act may continue to be issued citations to ensure compliance with this section."

Session Laws 2006-221, s. 21(a), provided that if Senate Bill 774 of the 2005 Regular Session [2006-140] becomes law, Session Laws 2006-66, s. 21.11 is repealed. Therefore subsection 20-135.2A(c) is set out above as amended by Session Laws 2006-140.

Session Laws 2009-451, s. 15.20(n), provides in part: "Subsections (a), (j), and (k) of this section become effective September 1, 2009, and apply to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-376, s. 12, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, in subdivision (c)(8), deleted "driver or" preceding "passenger" near the beginning, and deleted "and while traveling to and from garbage and recycling material loading and unloading locations" from the end.

Session Laws 2009-451, s. 15.20(j), effective September 1, 2009, substituted "twenty-five dollars and fifty cents ($25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b)" for "twenty-five dollars ($25.00) plus court costs in the sum of seventy-five dollars ($75.00)" in the first sentence of subsection (e). For applicability provisions, see Editor's note.

Legal Periodicals. — For note, "The Seat Belt Defense and North Carolina's New Mandatory Usage Law." See 64 N.C.L. Rev. 1127 (1986).

CASE NOTES

Legislative Intent. — It is not entirely clear that, by enacting this section, the North Carolina legislature created an evidentiary privilege as contemplated by F.R. Evid., Rule 501. United States v. Cartledge, 928 F.2d 93 (4th Cir. 1991), rev'd on other grounds, 928 F.2d 93 (4th Cir. 1991).

Constitutionality. — Defendant failed to show that this section was an unreasonable, arbitrary, or capricious restriction on the operator or passenger in a passenger vehicle; the statute clearly contributes in a reasonable manner to the safety of travel on the streets and highways of the State, and is, therefore, a proper exercise of the police power of the State by the General Assembly. State v. Swain, 92 N.C. App. 240, 374 S.E.2d 173 (1988).

Common Law Rule Regarding Inadmissibility of Seatbelt Evidence. — North Carolina has a strong common law rule, now codified by statute, that evidence that a plaintiff did not fasten his seatbelt is inadmissible in any civil action. Barron v. Ford Motor Co. of Canada Ltd., 965 F.2d 195 (7th Cir.), cert. denied, 506 U.S. 1001, 113 S. Ct. 605, 121 L. Ed. 2d 541 (1992).

The clearest articulation of North Carolina's common law rule against seatbelt evidence holds not that such evidence is inadmissible on all issues, but only that it is inadmissible to establish the plaintiff's failure to exercise due care to minimize the consequences of an accident should one occur. Barron v. Ford Motor Co. of Canada Ltd., 965 F.2d 195 (7th Cir.), cert. denied, 506 U.S. 1001, 113 S. Ct. 605, 121 L. Ed. 2d 541 (1992).

The common law rule is founded on the desire of the North Carolina courts not to penalize the failure to fasten one's seatbelt, because nonuse is so rampant in the state that the average person could not be thought careless for failing to fasten his seatbelt. Barron v. Ford Motor Co. of Canada Ltd., 965 F.2d 195 (7th Cir.), cert. denied, 506 U.S. 1001, 113 S. Ct. 605, 121 L. Ed. 2d 541 (1992).

Infants. — Evidence that an infant killed in a car accident was improperly sitting on the lap of, and within the seat belt of, the occupant of the front passenger's seat was not admissible in a personal injury and wrongful death action arising out of the accident. Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996).

Literal Interpretation of Subsection (d) May Be Incorrect. — This section is a mandatory seatbelt law, and evidence of nonuse can of course be introduced in a proceeding to impose a penalty for violation of the law. But if the statute is read literally, that is the only type of proceeding in which such evidence can be introduced. The literal interpretation of North Carolina's rule, though, is almost certainly incorrect. In State v. Brewer, 328 N.C. 515, 522, 402 S.E.2d 380, 385 (1991), a prosecution of a woman for murdering her disabled daughter by abandoning her car with the daughter in it on a railroad crossing, the Supreme Court of North Carolina remarked, without criticism, the introduction of evidence that the daughter knew how to release her seatbelt; it never occurred to anyone that such evidence might be inadmissible. Barron v. Ford Motor Co. of Canada Ltd., 965 F.2d 195 (7th Cir.), cert. denied, 506 U.S. 1001, 113 S. Ct. 605, 121 L. Ed. 2d 541 (1992).

This section precludes the introduction of any evidence regarding seat belt use, regardless of any knowledge of a specific hazard. Hagwood v. Odom, 88 N.C. App. 513, 364 S.E.2d 190 (1988).

The evidence of the failure of the defendant to use her seat belt was not admissible in a DWI trial. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

In an action arising from an automobile accident, a statutory prohibition in Conn. Gen. Stat. §§ 14-100a(c)(3) and 14-222 regarding evidence of contributory negligence based on failure to use a seat belt also applied to the misuse of a seat belt based on case law in other jurisdictions interpreting similar provisions, such as G.S. 20-135.2A(d) and G.S. 20-137.1(d) and Kan. Stat. Ann. §§ 60-258a and 8-1344. Ferentzy v. Ferentzy, 2008 Conn. Super. LEXIS 1925 (Aug. 4, 2008).

This section precludes any instruction to the jury which would allow mitigation of damages for failure to wear a seat belt. Hagwood v. Odom, 88 N.C. App. 513, 364 S.E.2d 190 (1988).

Under the law that obtained prior to this section, a motorist was not contributorily negligent for failure to use his seat belt unless the motorist with prior knowledge of a specific hazard, one not generally associated with highway travel, had failed or refused to fasten his seat belt. Hagwood v. Odom, 88 N.C. App. 513, 364 S.E.2d 190 (1988).

Under the law that obtained prior to this section, the failure to fasten one's seat belt could not be held to be a breach of the duty to minimize damages, as the duty to minimize damages arises only after the negligent act of defendant, and a plaintiff's failure to fasten his seat belt necessarily occurs before defendant's allegedly negligent act. Hagwood v. Odom, 88 N.C. App. 513, 364 S.E.2d 190 (1988).

Use of Evidence of Violation is Limited. — Although failure to wear a seat belt is a traffic violation under this section, subsection (d) prohibits using evidence of the seat belt violation other than in proceedings to enforce the traffic violation. United States v. Cartledge, 928 F.2d 93 (4th Cir. 1991).

Non-use of Seat Belts Probable Cause. — Officer had probable cause to stop vehicle in which defendant was a passenger where officer observed that neither the driver or the defendant passenger were wearing seat belts. Likewise, the officer was allowed to ask defendant passenger to exit the vehicle. State v. Hamilton, 125 N.C. App. 396, 481 S.E.2d 98 (1997), appeal dismissed and cert. denied, 345 N.C. 757, 485 S.E.2d 302 (1997).

Police officer had probable cause pursuant to U.S. Const. amend. IV and N.C. Const. art. I, § 20 to stop defendant's vehicle because the officer witnessed defendant remove his seat belt while driving, a violation of G.S. 20-135.2A(a). State v. Hernandez, 170 N.C. App. 299, 612 S.E.2d 420, 2005 N.C. App. LEXIS 1006 (2005).

For case holding traffic stop not pretextual where officer stopped defendant on premise that defendant was not wearing a seat belt, see State v. Morocco, 99 N.C. App. 421, 393 S.E.2d 545 (1990).

In the 1987 amendment to subsection (d) not only did the General Assembly retain the exclusion of the seat belt defense in civil cases, but expanded the act so as to exclude evidence of the failure to have a fastened seat belt in place in other criminal proceedings. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

Cited in State v. McClendon, 130 N.C. App. 368, 502 S.E.2d 902 (1998); State v. Brewington, 170 N.C. App. 264, 612 S.E.2d 648, 2005 N.C. App. LEXIS 1011 (2005).

§ 20-135.2B. Transporting children under 16 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall ensure that no child under 16 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child.

(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208,

installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner.

(3) An emergency situation exists.

(4) The vehicle is being operated in a parade.

(5) The vehicle is being operated in an agricultural enterprise, including providing transportation to and from the principal place of the agricultural enterprise.

(6) Repealed by Session Laws 2008-216, s. 1, effective October 1, 2008.

(c) Any person violating this section shall have committed an infraction and shall pay a penalty of not more than twenty-five dollars ($25.00), even if more than one child less than 16 years of age is riding in the open bed or open cargo area of a vehicle. A person found responsible for a violation of this section may not be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. A violation of this section shall not constitute negligence per se. (1993 (Reg. Sess., 1994), c. 672, s. 1; 1995, c. 163, s. 7; 1999-183, s. 4; 2008-216, s. 1.)

Effect of Amendments. — Session Laws 2008-216, s. 1, effective October 1, 2008, and applicable to offenses committed on or after that date, substituted "16" for "12" in the section heading; in subsection (a), substituted "ensure" for "insure" and substituted "16" for "12"; deleted "pursuant to a valid permit" following "parade" in subdivision (b)(4); added "including providing transportation to and from the principal place of the agricultural enterprise" in subdivision (b)(5); deleted subdivision (b)(6) which read: "The vehicle is being operated in a county that has no incorporated area with a population in excess of 3,500"; rewrote subsection (c); and added the second sentence in subsection (d).

CASE NOTES

Civil Actions Based on Alleged Violation. — Trial court properly dismissed an injured party's claim against a church and a landowner, alleging that the church and the landowner where negligent because they allowed children younger than 12 years old to ride on an open flatbed trailer during a church festival in violation of G.S. 20-135.2B, because the festival occurred on private property and G.S. 20-135.2B did not apply to activities that occurred on private property. Clontz v. St. Mark's Evangelical Lutheran Church, 157 N.C. App. 325, 578 S.E.2d 654, 2003 N.C. App. LEXIS 537 (2003), cert. denied, 357 N.C. 249, 582 S.E.2d 29 (2003).

Cited in State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

§ 20-135.3. Seat belt anchorages for rear seats of motor vehicles.

Every new motor vehicle registered in this State and manufactured, assembled or sold after July 1, 1966, shall be equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts for the rear seat of the motor vehicle. Such anchorage units at the attachment points shall be of such construction, design and strength to support a loop load strength of not less than 5,000 pounds for each belt.

The provisions of this section shall apply to passenger vehicles of nine-passenger capacity or less, except motorcycles. (1965, c. 372.)

§ 20-135.4. Certain automobile safety standards.

(a) Definitions. — For the purposes of this section, the term "private passenger automobile" shall mean a four-wheeled motor vehicle designed principally for carrying passengers, for use on public roads and highways, except a multipurpose passenger vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation.

(b), (c) Repealed by Session Laws 1975, c. 856.

(d) The manufacturer's specified height of any passenger motor vehicle shall not be elevated or lowered, either in front or back, more than six inches by modification, alteration, or change of the physical structure of said vehicle without prior written approval of the Commissioner of Motor Vehicles.

On or after January 1, 1975, no self-propelled passenger vehicle that has been so altered, modified or changed shall be operated upon any highway or public vehicular area without the prior written approval of the Commissioner. (1971, c. 485; 1973, cc. 58, 1082; 1975, c. 856.)

OPINIONS OF ATTORNEY GENERAL

As to applicability to specific vehicle, and nonpreemption by federal legislation, see opinion of Attorney General to Mr. Joe W. Garrett, Commissioner of Motor Vehicles, 41 N.C.A.G. 677 (1971).

§ 20-136. Smoke screens.

(a) It shall be unlawful for any person or persons to drive, operate, equip or be in the possession of any automobile or other motor vehicle containing, or in any manner provided with, a mechanical machine or device designed, used or capable of being used for the purpose of discharging, creating or causing, in any manner, to be discharged or emitted, either from itself or from the automobile or other motor vehicle to which attached, any unusual amount of smoke, gas or other substance not necessary to the actual propulsion, care and keep of said vehicle, and the possession by any person or persons of any such device, whether the same is attached to any such motor vehicle, or detached therefrom, shall be prima facie evidence of the guilt of such person or persons of a violation of this section.

(b) Any person or persons violating the provisions of this section shall be guilty of a Class I felony. (1937, c. 407, s. 99; 1993, c. 539, s. 1257; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-136.1. Location of television, computer, or video players, monitors, and screens.

No person shall drive any motor vehicle upon a public street or highway or public vehicular area while viewing any television, computer, or video player which is located in the motor vehicle at any point forward of the back of the driver's seat, and which is visible to the driver while operating the motor vehicle. This section does not apply to the use of global positioning systems; turn-by-turn navigation displays or similar navigation devices; factory-installed or aftermarket global positioning systems or wireless communications devices used to transmit or receive data as part of a digital dispatch system; equipment that displays audio system information, functions, or controls, or weather, traffic, and safety information; vehicle safety or equipment information; or image displays that enhance the driver's view in any direction, inside or outside of the vehicle. The provisions of this section shall not apply to law enforcement or emergency personnel while in the performance of their official duties, or to the operator of a vehicle that is lawfully parked or stopped. (1949, c. 583, s. 4; 2009-376, s. 13.)

Effect of Amendments. — Session Laws 2009-376, s. 13, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, rewrote the section.

§ 20-136.2. Air bag installation.

It shall be unlawful for any person, firm, or corporation to knowingly install or reinstall any object in lieu of an air bag, other than an air bag that was designed in accordance with federal safety regulations for the make, model, and year of vehicle, as part of a vehicle inflation restraint system. Any person, firm, or corporation violating this section shall be guilty of a Class 1 misdemeanor. (2003-258, s. 3.)

§ 20-137: Repealed by Session Laws 1995, c. 379, s. 18.2.

§ 20-137.1. Child restraint systems required.

(a) Every driver who is transporting one or more passengers of less than 16 years of age shall have all such passengers properly secured in a child passenger restraint system or seat belt which meets federal standards applicable at the time of its manufacture.

(a1) A child less than eight years of age and less than 80 pounds in weight shall be properly secured in a weight-appropriate child passenger restraint system. In vehicles equipped with an active passenger-side front air bag, if the vehicle has a rear seat, a child less than five years of age and less than 40 pounds in weight shall be properly secured in a rear seat, unless the child restraint system is designed for use with air bags. If no seating position equipped with a lap and shoulder belt to properly secure the weight-appropriate child passenger restraint system is available, a child less than eight years of age and between 40 and 80 pounds may be restrained by a properly fitted lap belt only.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iii) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any driver found responsible for a violation of this section may be punished by a penalty not to exceed twenty-five dollars ($25.00), even when more than one child less than 16 years of age was not properly secured in a restraint system. No driver charged under this section for failure to have a child under eight years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system for a vehicle in which the child is normally transported.

(d) A violation of this section shall have all of the following consequences:
- (1) Two drivers license points shall be assessed pursuant to G.S. 20-16.
- (2) No insurance points shall be assessed.
- (3) The violation shall not constitute negligence per se or contributory negligence per se.
- (4) The violation shall not be evidence of negligence or contributory negligence. (1981, c. 804, ss. 1, 4, 5; 1985, c. 218; 1993 (Reg. Sess., 1994), c. 748, s. 1; 1999-183, ss. 6, 7; 2000-117, s. 1; 2004-191, ss. 1, 2; 2007-6, s. 1.)

Editor's Note. — Session Laws 1981, c. 804, s. 6, provided: "This act shall become effective on July 1, 1982, and shall expire on June 30, 1985." The section was subsequently rewritten by Session Laws 1985, c. 218, effective July 1, 1985, and hence did not expire.

CASE NOTES

Regulations promulgated by the State Division of Motor Vehicles designed to insure that manufacturers comply with applicable standards for child passenger restraint systems by requiring verification of any equipment regulated by this section are preempted by the National Motor Vehicle Safety Act of 1966, 15 U.S.C.A. § 1381 et seq., as amended. Juvenile Prods. Mfrs. Ass'n v. Edmisten, 568 F. Supp. 714 (E.D.N.C. 1983).

Evidence of Contributory Negligence. — In an action arising from an automobile accident, a statutory prohibition in Conn. Gen. Stat. §§ 14-100a(c)(3) and 14-222 regarding evidence of contributory negligence based on failure to use a seat belt also applied to the misuse of a seat belt based on case law in other jurisdictions interpreting similar provisions, such as G.S. 20-135.2A(d) and G.S. 20-137.1(d) and Kan. Stat. Ann. §§ 60-258a and 8-1344. Ferentzy v. Ferentzy, 2008 Conn. Super. LEXIS 1925 (Aug. 4, 2008).

Failure to Restrain Child Held Not Actionable Negligence. — Mother's failure to fasten her child in a child restraint system as required by this section as it existed at the time of the accident did not constitute actionable negligence and was therefore not the proximate cause of death of child. Thus, mother could not be held jointly liable for damages awarded to the child's estate in wrongful death action against other driver. State Farm Mut. Auto. Ins. Co. v. Holland, 324 N.C. 466, 380 S.E.2d 100 (1989) (decided under prior law).

Improper Restraint. — Evidence that an infant killed in a car accident was improperly sitting on the lap of, and within the seat belt of, the occupant of the front passenger's seat was not admissible in a personal injury and wrongful death action arising out of the accident. Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996).

§ 20-137.2. Operation of vehicles resembling law-enforcement vehicles unlawful; punishment.

(a) It is unlawful for any person other than a law-enforcement officer of the State or of any county, municipality, or other political subdivision thereof, with the intent to impersonate a law-enforcement officer, to operate any vehicle, which by its coloration, insignia, lettering, and blue or red light resembles a vehicle owned, possessed, or operated by any law-enforcement agency.

(b) Violation of subsection (a) of this section is a Class 1 misdemeanor. (1979, c. 567, s. 1; 1993, c. 539, s. 362; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.

(a) Definitions. — The following definitions apply in this section:

(1) Additional technology. — Any technology that provides access to digital media including, but not limited to, a camera, music, the Internet, or games. The term does not include electronic mail or text messaging.

(2) Mobile telephone. — A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. — A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. — Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. — The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. — The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent, legal guardian or spouse.

(e) Penalty. — Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section. (2006-177, s. 1; 2009-135, s. 1.)

Editor's Note. — Session Laws 2006-177, s. 8, makes this section effective December 1, 2006, and applicable to offenses committed on or after that date.

Session Laws 2009-135, s. 3, provides: "The Joint Legislative Transportation Oversight Committee shall identify and study the leading causes of driver inattention or distraction, the risks posed by driver inattention or distraction, and any methods that might be used to manage those driver distractions and promote highway safety. The Committee shall report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010."

Effect of Amendments. — Session Laws 2009-135, s. 1, effective December 1, 2009, and applicable to offenses committed on or after that date, in subdivision (a)(1), substituted "including, but not limited to, a camera, music" for "such as a camera, electronic mail, music" in the first sentence, and added the second sentence.

§ 20-137.4. Unlawful use of a mobile phone.

(a) Definitions. — For purposes of this section, the following terms shall mean:

(1) Additional technology. — As defined in G.S. 20-137.3(a)(1).

(2) Emergency situation. — Circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a school bus.

(3) Mobile telephone. — As defined in G.S. 20-137.3(a)(2).

(4) School bus. — As defined in G.S. 20-4.01(27)d4. The term also includes any school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle transporting public, private, or parochial school students for compensation.

(b) Offense. — Except as otherwise provided in this section, no person shall operate a school bus on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the school bus is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone in a stationary school bus.

(c) Seizure. — The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone or additional technology, unless otherwise provided by law.

(d) Exceptions. — The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone for the sole purpose of communicating in an emergency situation.

(e) Local Ordinances. — No local government may pass any ordinance regulating the use of mobile telephones or additional technology associated with a mobile telephone by operators of school buses.

(f) Penalty. — A violation of this section shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a school bus. (2007-261, s. 1.)

Editor's Note. — Session Laws 2007-261, s. 2, made this section effective December 1, 2007, and applicable to offenses committed on or after that date.

Session Laws 2009-135, s. 3, provides: "The Joint Legislative Transportation Oversight Committee shall identify and study the leading causes of driver inattention or distraction, the risks posed by driver inattention or distraction, and any methods that might be used to manage those driver distractions and promote highway safety. The Committee shall report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010."

§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.

(a) Offense. — It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

(1) Manually enter multiple letters or text in the device as a means of communicating with another person; or

(2) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

(b) Exceptions. — The provisions of this section shall not apply to:

(1) The operator of a vehicle that is lawfully parked or stopped.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.

(4) The use of voice operated technology.

(c) Penalty. — A violation of this section while operating a school bus, as defined in G.S. 20-137.4(a)(4), shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). Any other violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the costs of court.

No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence per se by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle. (2009-135, s. 2.)

Editor's Note. — Session Laws 2009-135, s. 3, provides: "The Joint Legislative Transportation Oversight Committee shall identify and study the leading causes of driver inattention or distraction, the risks posed by driver inattention or distraction, and any methods that might be used to manage those driver distractions and promote highway safety. The Committee shall report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010."

Session Laws 2009-135, s. 4, made this section effective December 1, 2009, and applicable to offenses committed on or after that date.

§ 20-137.5. Child passenger safety technician; limitation of liability.

(a) The following definitions apply in this section:

(1) Certified child passenger safety technician. — A certified child passenger safety technician is an individual who has successfully completed the U.S. Department of Transportation National Highway Traffic Safety Administration's (NHTSA) National Standardized Child Passenger Safety Certification Training Program and who maintains a current child passenger safety technician or technician instructor certification through the current certifying body for the National Child Passenger Safety Training Program as designated by the National Highway Traffic Safety Administration.

(2) Sponsoring organization. — A sponsoring organization is a person or organization other than a manufacturer of or employee or agent of a manufacturer of child safety seats that:

a. Offers or arranges for the public a nonprofit child safety seat educational program, checkup event, or checking station program utilizing certified child passenger safety technicians; or

b. Owns property upon which a nonprofit child safety seat educational program, checkup event, or checking station program for the public occurs utilizing certified child passenger safety technicians.

(b) Limitation of Liability. — Except as provided in subsection (c) of this section, a certified child passenger safety technician or sponsoring organization shall not be liable to any person as a result of any act or omission that occurs solely in the inspection, installation, or adjustment of a child safety seat or in providing education regarding the installation or adjustment of a child safety seat if:

(1) The service is provided without fee or charge other than reimbursement for expenses, and

(2) The child passenger safety technician or sponsoring organization acts in good faith and within the scope of training for which the technician is currently certified.

(c) Exceptions. — The limitation on liability shall not apply under any of the following conditions:

(1) The act or omission of the certified child passenger safety technician or sponsoring organization constitutes willful or wanton misconduct or gross negligence.

(2) The inspection, installation, or adjustment of a child safety seat or education provided regarding the installation or adjustment of a child safety seat is in conjunction with the for-profit sale of a child safety seat. (2008-178, s. 1.)

Editor's Note. — Session Laws 2008-178, s. 2, made this section effective October 1, 2008, and applicable to any cause of action arising on or after that date.

Part 9A. Abandoned and Derelict Motor Vehicles.

§ 20-137.6. Declaration of purpose.

Abandoned and derelict motor vehicles constitute a hazard to the health and welfare of the people of the State in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. It is therefore in the public interest that the present accumulation of abandoned and derelict motor vehicles be eliminated and that the future abandonment of such vehicles be prevented. (1973, c. 720, s. 1.)

Editor's Note. — Session Laws 1973, c. 720, s. 2, provided: "This act shall not repeal or modify G.S. 20-162.3 and shall become effective on Sept. 3, 1973." Section 20-162.3 was transferred to G.S. 20-219.3 by Session Laws 1973, c. 1330, s. 36.

§ 20-137.7. Definitions of words and phrases.

The following words and phrases when used in this Part shall for the purpose of this Part have the meaning respectively prescribed to them in this Part, except in those instances where the context clearly indicates a different meaning:

(1) "Abandoned vehicle" means a motor vehicle that has remained illegally on private or public property for a period of more than 10 days without the consent of the owner or person in control of the property.

(2) "Demolisher" means any person, firm or corporation whose business is to convert a motor vehicle into processed scrap or scrap metal or otherwise to wreck, or dismantle, such a vehicle.

(3) "Department" means the North Carolina Department of Transportation.

(4) "Derelict vehicle" means a motor vehicle:

  a. Whose certificate of registration has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the North Carolina Department of Transportation; or

  b. Whose major parts have been removed so as to render the vehicle inoperable and incapable of passing inspection as required under existing standards; or

  c. Whose manufacturer's serial plates, vehicle identification numbers, license number plates and any other means of identification have been removed so as to nullify efforts to locate or identify the registered and legal owner; or

  d. Whose registered and legal owner of record disclaims ownership or releases his rights thereto; or

  e. Which is more than 12 years old and does not bear a current license as required by the Department.

(5) "Officer" means any law-enforcement officer of the State, of any county or of any municipality including county sanitation officers.

(6) "Salvage yard" means a business or a person who possesses five or more derelict vehicles, regularly engages in buying and selling used vehicle parts.

(7) "Secretary" means the Secretary of the North Carolina Department of Transportation.

(8) "Tag" means any type of notice affixed to an abandoned or derelict motor vehicle advising the owner or the person in possession that the same has been declared an abandoned or derelict vehicle and will be

treated as such, which tag shall be of sufficient size as to be easily discernible and contain such information as the Secretary deems necessary to enforce this Part.

(9) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway by mechanical means.

(10) "Vehicle recycling" means the process whereby discarded vehicles (abandoned, derelict or wrecked) are collected and then processed by shredding, bailing or shearing to produce processed scrap iron and steel which is then remelted by steel mills and foundries to make raw materials which are subsequently used to manufacture new metal-based products for the consumer. (1973, c. 720, s. 1.)

§ 20-137.8. Secretary may adopt rules and regulations.

The Secretary is hereby vested with the power and is charged with the duties of administering the provisions of this Part and is authorized to adopt such rules and regulations as may be necessary to carry out the provisions thereof. (1973, c. 720, s. 1.)

§ 20-137.9. Removal from private property.

Any abandoned or any derelict vehicle in this State shall be subject to be removed from public or private property provided not objected to by the owner of the private property after notice as hereinafter provided and disposed of in accordance with the provisions of this Part, provided, that all abandoned motor vehicles left on any right-of-way of any road or highway in this State may be removed in accordance with G.S. 20-161. (1973, c. 720, s. 1.)

§ 20-137.10. Abandoned and derelict vehicles to be tagged; determination of value.

(a) When any vehicle is derelict or abandoned in this State, the Secretary shall cause a tag to be placed on the vehicle which shall be notice to the owner, the person in possession of the vehicle, or any lienholder that the same is considered to have been derelict or abandoned and is subject to forfeiture to the State.

(b) Repealed by Session Laws 1975, c. 438, s. 3.

(c) The tag shall serve as the only notice that if the vehicle is not removed within five days from the date reflected on the tag, it will be removed to a designated place to be sold. After the vehicle is removed, the Secretary shall give notice in writing to the person in whose name the vehicle was last registered at the last address reflected in the Department's records and to any lienholder of record that the vehicle is being held, designating the place where the vehicle is being held and that if it is not redeemed within 10 days from the date of the notice by paying all costs of removal and storage the same shall be sold for recycling purposes. The proceeds of the sale shall be deposited in the highway fund established for the purpose of administering the provisions of this Part.

(d) If the value of the vehicle is determined to be more than one hundred dollars ($100.00), and if the identity of the last registered owner cannot be determined or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identification and addresses of any lienholders, notice by one publication in a newspaper of general circulation in the area where the vehicle was located shall be sufficient to meet all requirements of notice pursuant to this Part. The notice of publication may contain multiple listings of vehicles. Five days after date of publication the advertised vehicles may be sold. The proceeds of such sale shall be deposited in the highway fund established for the purpose of administering the provisions of this Part.

(d1) If the value of the vehicle is determined to be less than one hundred dollars ($100.00), and if the identity of the last registered owner cannot be determined or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identification and addresses of any lienholders, no notice in addition to that required by subsection (a) hereof shall be required prior to sale.

(e) All officers, as defined in this Part, are given the authority to appraise or determine the value of derelict or abandoned vehicles as defined in this Part. (1973, c. 720, s. 1; 1975, c. 438, s. 3.)

§ 20-137.11. Title to vest in State.

Title to all vehicles sold or disposed of in accordance with this Part shall vest in the State. All manufacturers' serial number plates and any other identification numbers for all vehicles sold to any person other than a demolisher shall at the time of the sale be turned in to the Department for destruction. Any demolisher purchasing or acquiring any vehicle hereunder shall, under oath, state to the Department that the vehicles purchased or acquired by it have been shredded or recycled.

The Secretary shall remove and destroy all departmental records relating to such vehicles in such method and manner as he may prescribe. (1973, c. 720, s. 1.)

§ 20-137.12. Secretary may contract for disposal.

The Secretary is hereby authorized to contract with any federal, other state, county or municipal authority or private enterprise for tagging, collection, storage, transportation or any other services necessary to prepare derelict or abandoned vehicles for recycling or other methods of disposal. Publicly owned properties, when available, shall be provided as temporary collecting areas for the vehicles defined herein. The Secretary shall have full authority to sell such derelict or abandoned vehicles. If the Secretary deems it more advisable and practical, in addition, he is authorized to contract with private enterprise for the purchase of such vehicles for recycling. (1973, c. 720, s. 1.)

§ 20-137.13. No liability for removal.

No agent or employee of any federal, State, county or municipal government, no person or occupant of the premises from which any derelict or abandoned vehicle shall be removed, nor any person or firm contracting for the removal of or disposition of any such vehicle shall be held criminally or civilly liable in any way arising out of or caused by carrying out or enforcing any provisions of this Part. (1973, c. 720, s. 1.)

§ 20-137.14. Enclosed, antique, registered and certain other vehicles exempt.

The provisions of this Part shall not apply to vehicles located on used car lots, in private garages, enclosed parking lots, or on any other parking area on private property which is not visible from any public street or highway, nor to motor vehicles classified as antiques and registered under the laws of the State of North Carolina, those not required by law to be registered, or those in possession of a salvage yard as defined in G.S. 20-137.7, unless that vehicle presents some safety or health hazard or constitutes a nuisance. (1973, c. 720, s. 1.)

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138: Repealed by Session Laws 1983, c. 435, s. 23.

§ 20-138.1. Impaired driving.

(a) Offense. — A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. — The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. — Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. — In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. — Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. — Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse. (1983, c. 435, s. 24; 1989, c. 711, s. 2; 1993, c. 285, s. 1; 2006-253, s. 9.)

Cross References. — For Parole Commission's authority to parole and terminate supervision of persons convicted under this section, see G.S. 15A-1372(d). As to compensation for injury caused by sales of alcoholic beverages to underage persons, see G.S. 18B-120 et seq. For definition of "alcohol concentration," see G.S. 20-4.01(1b). As to felony and misdemeanor death by vehicle, see G.S. 20-141.4.

Editor's Note. — Session Laws 2007-493, s. 32, provides: "The Legislative Research Commission may study dispositional alternatives for juveniles who are adjudicated delinquent for an offense that is a violation of G.S. 20-138.1, Impaired Driving, or G.S. 20-138.3, Driving By Persons Less Than 21 Years Old After Consuming Alcohol or Drugs. In conducting its study, the Commission shall consider the offense classifications and dispositions set forth in G.S. 7B-2508 and shall determine whether violations of G.S. 20-138.1 and G.S. 20-138.3 should be classified as violent, serious, or minor. In addition, the Commission shall review the delinquency history level points assigned to the offense classifications pursuant to G.S. 7B-2507 and shall determine the appropriate points to be assigned for violations of G.S. 20-138.1 and G.S. 20-138.3. The Legislative Research Commission may make an interim report, including any legislative proposals, to the 2007 General Assembly, Regular Session 2008, and shall make its final report to the 2009 General Assembly upon its convening."

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

For note discussing the definition of "driving" under the North Carolina Safe Roads Act, in light of State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985), see 64 N.C.L. Rev. 1278 (1986).

For note, "Constitutional Law-Enhanced Sentencing Under North Carolina's DWI Statute: Making Due Process Disappear — Field v. Sheriff of Wake County, N.C.," see 23 Wake Forest L. Rev. 517 (1988).

For note, "North Carolina and Pretrial Civil Revocation of an Impaired Driver's License and the Double Jeopardy Clause," see 18 Campbell L. Rev. 391 (1996).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2315 (1997).

For 1997 legislative survey, see 20 Campbell L. Rev. 417.

For comment, "North Carolina's Unconstitutional Expansion of an Ancient Maxim: Using DWI Fatalitites to Satisfy First Degree Felony Murder," see 22 Campbell L. Rev. 169 (1999).

For note, "Ramifications of the 1997 DWI/ Felony Prior Record Level Amendment to the Structured Sentencing Act: State of North Carolina v. Tanya Watts Gentry," see 22 Campbell L. Rev. 211 (1999).

CASE NOTES

I. In General.
II. Driving Under the Influence.
III. Driving with 0.10 (Now 0.08) Percent or More Alcohol in Blood.
IV. Procedure.
V. Instructions.
VI. Sentencing.

I. IN GENERAL.

Editor's Note. — *Some of the cases cited below were decided under former G.S. 20-138 and 20-139 or corresponding provisions of prior law and prior to the 1993 amendment which reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

Constitutionality. — The prohibition against driving upon the public highways when the amount of alcohol in one's blood is 0.10 (now 0.08) percent or more by weight contributes in a real and substantial way to the safety of other travelers and is a constitutional exercise of police power by the General Assembly. State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).

Section 20-139.1(b3) does not create an impermissible classification and the Safe Roads Act (G.S. 20-138.1 et seq.) does not deny the equal protection of the laws. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Subdivision (a)(2) of this section does not contravene constitutional due process. State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984).

Subdivision (a)(2) is not unconstitutionally vague and uncertain, nor does it violate a driver's substantive due process rights. State v. Ferrell, 75 N.C. App. 156, 330 S.E.2d 225, cert. denied and appeal dismissed, 314 N.C. 333, 333 S.E.2d 492 (1985).

For case reaffirming the constitutionality of subdivision (a)(2) of this section and G.S. 20-4.01(33a), see State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

Revocation of one's driver's license under G.S. 20-16.5 and subsequent convictions of DWI under this section do not violate the prohibition against double jeopardy. State v. Rogers, 124 N.C. App. 364, 477 S.E.2d 221 (1996).

Appellate court declined to find G.S. 20-138.1 unconstitutional, because the challenged provision, "shall be deemed sufficient evidence to prove," did not create an evidentiary or factual presumption, but simply stated the standard for prima facie evidence of a defendant's alcohol concentration State v. Narron, — N.C. App. —, 666 S.E.2d 860, 2008 N.C. App. LEXIS 1758 (2008).

Impact of Double Jeopardy Clause. — Because a 30-day license revocation is a civil sanction rather than a criminal penalty, the Double Jeopardy Clause does not bar a defendant's subsequent criminal prosecution for driving while impaired by alcohol. State v. Evans, 145 N.C. App. 324, 550 S.E.2d 853, 2001 N.C. App. LEXIS 639 (2001).

The plaintiff failed to prove that North Carolina's prior imposition of a thirty-day period of administrative license revocation under G.S. 20-16.5 constituted a criminal punishment within the meaning of the Double Jeopardy Clause of the Fifth Amendment, U.S. Const. Amend. V, and barred plaintiff's prosecution for the offense of driving while impaired in violation of G.S. 20-138.1. Brewer v. Kimel, 256 F.3d 222, 2001 U.S. App. LEXIS 15693 (4th Cir. 2001).

Jurisdiction of State Capital Officer. — Trial court erred by concluding that the arresting State Capitol Police officer had no jurisdiction to arrest defendant for DWI. State v. Dickerson, 125 N.C. App. 592, 481 S.E.2d 344 (1997).

Construction with § 20-16.2. — A civil superior court determination, on appeal from an administrative hearing, pursuant to G.S. 20-16.2(e), regarding an allegation of willful refusal, estops the relitigation of that same issue in a defendant's criminal prosecution for DWI. The district attorney and the Attorney General both represent the interests of the people of North Carolina, regardless of whether it be the district attorney in a criminal trial court or the Attorney General in a civil or criminal appeal. State v. Summers, 351 N.C. 620, 528 S.E.2d 17, 2000 N.C. LEXIS 351 (2000).

As a trial court erred in failing to suppress the intoxilyzer testing evidence obtained after defendant was arrested for driving while impaired because defendant's right under G.S. 20.16.2(a) to have a witness present during the testing had been violated, the trial court also erred in accepting defendant's plea of guilty to the driving while impaired charge. State v. Hatley, 190 N.C. App. 639, 661 S.E.2d 43, 2008 N.C. App. LEXIS 1013 (2008).

The legislature may constitutionally make it a crime for persons to have an alcohol concentration of 0.10 (now 0.08) or more at any relevant time after driving on the highways and public vehicular areas of this State and that is all subdivision (a)(2) of this section does. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

A legislature may not declare an individual guilty or presumptively guilty of crime. Subdivision (a)(2) of this section does not run afoul of that prohibition. By stating that anyone who drives a vehicle upon a highway, street, or public vehicular area after having consumed such an amount of alcohol that he has a blood-alcohol concentration of 0.10 (now 0.08) or more at any relevant time after the driver has committed the offense of driving while impaired, the legislature has merely stated the elements of the offense, proof of which constitutes guilt. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Courts in other jurisdictions in considering challenges to driving while impaired statutes have agreed that a 0.10 (now 0.08) blood-alcohol concentration is not an unconstitutionally vague standard simply because a drinking driver does not know precisely when he has reached that level. These courts have adopted the position that all persons are presumed to know the law and a defendant who drinks and then drives takes the risk that his blood-alcohol content will exceed the legal maximum. The N.C. Superior Court agrees with this rationale. State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984).

Purpose. — Former G.S. 20-138 was designed for the protection of human life or limb. State v. Stewardson, 32 N.C. App. 344, 232 S.E.2d 308, cert. denied, 292 N.C. 643, 235 S.E.2d 64 (1977).

Assimilation of Section into Federal Law. — Under 18 U.S.C. § 13 this section, the driving while impaired statute of North Carolina, is assimilated into federal law, but an offender can only be convicted of a misdemeanor in the federal court and his punishment therein cannot exceed a fine of $1,000 and imprisonment for a term in excess of one year. Such a misdemeanor is within the jurisdiction of the federal magistrates, subject to the provisions of 18 U.S.C. § 3401. United States v. Kendrick, 636 F. Supp. 189 (E.D.N.C. 1986).

Collateral estoppel barred state from introducing evidence. — The state is collaterally estopped from litigating issues in a criminal DWI case when those exact issues have been relitigated in a civil license revocation hearing with the Attorney General representing the DMV in superior court; defendant was found to have not refused to take the breathalyzer test in the earlier proceeding, so that the results of the single breath analysis were inadmissible, and privity of parties existed, as both the Attorney General and the District Attorney represent the same party, which is the people of the State of North Carolina. State v. Summers, 132 N.C. App. 636, 513 S.E.2d 575, 1999 N.C. App. LEXIS 275 (1999), aff'd, 351 N.C. 620, 528 S.E.2d 17 (2000).

"Driving" Construed. — It could be fairly and logically inferred from the circumstantial evidence offered by the State that defendant drove his vehicle on the highway and that he did so while he was under the influence of intoxicating liquor, where defendant was found asleep and intoxicated sitting in the driver's seat of his car, which was stopped in its proper lane at a stop sign, with the lights out and the engine running; no one else was in or near the car; and defendant stated to the officer that he had gone to Zebulon earlier that night and was on his way home. State v. Carter, 15 N.C. App. 391, 190 S.E.2d 241 (1972).

One "drives" within the meaning of this section if he is in actual physical control of a vehicle which is in motion or which has the engine running. State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985).

The trial court did not err in finding that the defendant was "driving" a vehicle within the meaning of this section when he sat behind the steering wheel in the driver's seat of the car and started the car's engine in order to make the heater operable, but the car remained motionless on the street. State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985).

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under this section. Since "driver" is defined in G.S. 20-4.01 simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984).

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"Operate" Construed. — It could be fairly and logically inferred from the circumstantial evidence offered by the State that defendant drove his vehicle on the highway and that he did so while he was under the influence of intoxicating liquor, where defendant was found asleep and intoxicated sitting in the driver's seat of his car, which was stopped in its proper lane at a stop sign, with the lights out and the engine running; no one else was in or near the car; and defendant stated to the officer that he had gone to Zebulon earlier that night and was on his way home. State v. Carter, 15 N.C. App. 391, 190 S.E.2d 241 (1972).

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under this section. Since "driver" is defined in G.S. 20-4.01 simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984).

Meaning of "Operator". — In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under G.S. 20-4.01(25). State v. Turner, 29 N.C. App. 163, 223 S.E.2d 530 (1976).

Sufficient Evidence That Defendant Physically Controlled Vehicle. — Evidence that defendant was seated behind the steering wheel of a car stopped on the handicapped or wheelchair ramp in a hotel parking lot, which car had its motor running, and that when aroused, the defendant himself turned off the car's engine, was sufficient to support a finding that the defendant was in actual physical control of the vehicle. State v. Mabe, 85 N.C. App. 500, 355 S.E.2d 186 (1987).

Trial court committed error by vacating a jury's verdict convicting the defendant of driving while impaired because a rational juror could infer from the physical evidence that the defendant drove the subject vehicle, including: (1) the presence of blood on the driver's side of the air bag; (2) blood on the defendant; (3) a lack of blood on the passenger side; (4) a burn on the other occupant's shoulder consistent with the passenger side safety belt; and (5) the fact that the driver's seat was pushed too far back for the other occupant to drive the vehicle while sitting in that seat, despite the other occupant's claim that she drove the vehicle. State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

Exclusion of Evidence of Operability Upheld. — Where defendant admitted that he was sitting behind the wheel of an automobile while the motor was running, that he put the car into drive three times and that the car moved forward on each occasion, failure to allow defendant to introduce evidence that the vehicle he was alleged to have been operating was not operable was not prejudicial and did not entitle him to a new trial for the offenses of habitual impaired driving and driving during revocation, as defendant demonstrated in the presence of a police officer that the car in which he was seated was a device in which a person might be transported for purposes of G.S. 20-4.01(49). State v. Clapp, 135 N.C. App. 52, 519 S.E.2d 90 (1999).

A horse is a vehicle for the purpose of charging a violation of this section. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Where the evidence showed that defendant was riding a horse on a street while defendant had an alcohol concentration of 0.18, the evidence was sufficient from which a jury could find that defendant drove a vehicle upon a street while under the influence of an impairing substance. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

For case holding that farm tractors were "vehicles" within the meaning of former G.S. 20-138 when operated upon a highway by one under the influence of intoxicating liquor, see State v. Green, 251 N.C. 141, 110 S.E.2d 805 (1959).

Portion of Sidewalk as "Highway". — The portion of a sidewalk between a street and a filling station, open to the use of the public as a matter of right for the purposes of vehicular traffic, is a "highway." State v. Perry, 230 N.C. 361, 53 S.E.2d 288 (1949).

Park Grounds as Public Vehicular Area. — Evidence held to permit a finding that at the time in question portion of park grounds legally in use as a parking lot was a "public vehicular area" within the meaning and intent of that phrase as used in G.S. 20-4.01(32), so as to permit a conviction under subsection (a) of this section for impaired driving thereon. State v. Carawan, 80 N.C. App. 151, 341 S.E.2d 96, cert. denied, 317 N.C. 337, 346 S.E.2d 141 (1986).

Meaning of "Impaired." — Under our former "driving under the influence" statutes the test was whether the accused had drunk a sufficient quantity of intoxicating beverage or taken a sufficient amount of narcotic drugs to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties. This section consolidated existing impairment offenses into a single offense with two different methods of proof, but it does not appear to have changed the basic definition of "impaired." State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Proof of Impaired Driving. — The offense of impaired driving is proven by evidence that defendant drove a vehicle on any highway in this State while his physical or mental faculties, or both, were "appreciably impaired by an impairing substance." State v. George, 78 N.C. App. 580, 335 S.E.2d 768 (1985).

Trial court did not err in denying defendant's motion to dismiss the charge against him of driving while impaired, as the trustworthiness of defendant's confessions was adequately corroborated by witnesses who observed defendant arrive at the scene of the fatal accident. State v. Cruz, 173 N.C. App. 689, 620 S.E.2d 251, 2005 N.C. App. LEXIS 2288 (2005).

There was sufficient evidence that defendant was appreciably impaired where state trooper observed defendant driving erratically, defendant had a pronounced alcohol odor about him, and defendant admitted he had been drinking significantly. State v. Phillips, 127 N.C. App. 391, 489 S.E.2d 890 (1997).

Admissible trial evidence established beyond a reasonable doubt that defendant was driving a vehicle while under the influence of alcohol in violation of G.S. 20-138.1; evidence showing that defendant was under the influence of alcohol included, inter alia: (1) weaving; (2) erratic braking; (3) driving 70 MPH in a 50 MPH zone; (4) the strong odor of alcohol on defendant's person; (5) defendant's unsteady balance; and (6) his statement that he had consumed alcohol. United States v. Van Hazel, 468 F. Supp. 2d 792, 2006 U.S. Dist. LEXIS 94757 (E.D.N.C. 2006).

Substantial Evidence Existed for Each Essential Element of DWI. — The trial court erred in dismissal of defendant's conviction for habitual driving while impaired under G.S. 20-138.5 because the state presented evidence that: (1) defendant was traveling at a speed in excess of sixty miles per hour; (2) defendant's vehicle had no motor vehicle tags; (3) defendant did not immediately stop after the arresting officer activated his red and blue lights and did not do so until after the officer accelerated to keep up with the vehicle and activated his airhorn more than once; (4) defendant did not stop in the rightmost lane of the four-lane highway, but rather stopped at a 'T' intersection in such a manner that defendant's and the officer's cars blocked the intersection; (5) defendant left his vehicle and started toward the officer's vehicle before being ordered to return to his vehicle; (6) upon approaching defendant's vehicle, the officer smelled a strong odor of alcohol; (7) the officer observed an open container of beer in the passenger area of defendant's vehicle; (8) defendant's coat was wet from what appeared to the officer to be beer waste; (9) defendant's speech was slurred; (10) defendant refused to take the ALCO-SENSOR test; and (11) defendant refused the Intoxilyzer test. Substantial evidence existed for each essential element of DWI, and viewing the evidence in a light most favorable to the State, revealed a reasonable inference of defendant's guilt based on direct and circumstantial evidence presented by the state, which was sufficient to support the jury's verdict of guilty. State v. Scott, 356 N.C. 591; 573 S.E.2d 866; 2002 N.C. LEXIS 1263 (2002). State v. Scott, 356 N.C. 591, 573 S.E.2d 866, 2002 N.C. LEXIS 1263 (2002).

Statutory Duty Imposed. — Pursuant to this section, a person under the influence of an impairing substance commits the offense of impaired driving if he drives a car on any public road. Thus, the statutory law imposes a duty on all persons to avoid driving while under the influence of an impairing substance. King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758, cert. denied, 315 N.C. 184, 337 S.E.2d 857 (1985).

Violation as Culpable Negligence. — A willful violation of former G.S. 20-138 would constitute culpable negligence if that violation was the proximate cause of death. State v. Atkins, 58 N.C. App. 146, 292 S.E.2d 744, cert. denied and appeal dismissed, 306 N.C. 744, 295 S.E.2d 480 (1982).

An intentional, willful or wanton violation of a statute or ordinance designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

This section is a statute designed for the protection of human life and limb, and as such, it is a matter of law that a violation of its provisions constitutes culpable negligence. State v. McGill, 314 N.C. 633, 336 S.E.2d 90 (1985).

It is negligence per se to operate a vehicle while impaired within the meaning of this section. Baker v. Mauldin, 82 N.C. App. 404, 346 S.E.2d 240 (1986).

Violation as Culpable Negligence. — There was sufficient evidence of intent to support defendant's assault with a deadly weapon inflicting serious injury conviction as: (1) there was evidence that defendant had consumed 9 to 12 beers in a two-hour timeframe; (2) defendant's blood alcohol content was well-above the threshold for driving while impaired; (3) defendant got into a truck, ran over a sign, and continued driving; (4) defendant eventually ran off the road and crashed into the victims' truck; and (5) a violation of G.S. 20-138.1 constituted culpable negligence as a matter of law. State v. Davis, — N.C. App. —, 678 S.E.2d 385, 2009 N.C. App. LEXIS 1080 (July 7, 2009).

Death caused by a violation may constitute manslaughter. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975); State v. Stewardson, 32 N.C. App. 344, 232 S.E.2d 308, cert. denied, 292 N.C. 643, 235 S.E.2d 64 (1977).

One who drives his automobile, in violation of statute, runs into another car, and thereby proximately causes the death of one of the occupants, is guilty of manslaughter at least. State v. Stansell, 203 N.C. 69, 164 S.E. 580 (1932).

Evidence that defendant was driving on the public highways of the State while under the influence of intoxicating liquor in violation of statute, and was driving recklessly in violation of G.S. 20-140, proximately causing the death of a passenger in his car, was sufficient to be submitted to the jury in a prosecution for manslaughter. State v. Blankenship, 229 N.C. 589, 50 S.E.2d 724 (1948).

While it is clear that driving while impaired is culpable negligence, in order to convict an impaired driver of involuntary manslaughter based upon his impairment, the state must show that while driving impaired defendant violated some other rule of the road, and that this violation was the proximate cause of the accident. State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985).

When a death is caused by one who was driving under the influence of alcohol, only two elements must exist for the successful prosecution of manslaughter: A willful violation of G.S. 20-138 (now this section) and the causal link between that violation and the death. If these elements are present, the State need not demonstrate that defendant violated any other rule of the road, nor that his conduct was in any other way wrongful. State v. McGill, 314 N.C. 633, 336 S.E.2d 90 (1985).

But Violation of Law Must Have Caused Accident and Death. — Death caused by a violation of statute may be manslaughter, but a condition precedent to conviction is that the violation of the law in this respect must have caused the wreck and the death of deceased. State v. Dills, 204 N.C. 33, 167 S.E. 459 (1933).

Precedent to a conviction of manslaughter for violation of either former G.S. 20-138 or G.S. 20-140(b) or both is that the violation of either one or both must have caused the accident and death of decedent. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

And a Causal Connection Must Be Shown. — Statutory violation, if conceded, is not sufficient to sustain a prosecution for involuntary manslaughter unless a causal relation is shown between the breach of the statute and the death. State v. Lowery, 223 N.C. 598, 27 S.E.2d 638 (1943).

The offense of felony death by vehicle requires the identical essential elements to those required for a conviction of involuntary manslaughter predicated on a violation of this section, to wit: a willful violation of this section, and a causal link between that violation and the death. State v. Williams, 90 N.C. App. 615, 369 S.E.2d 832, cert. denied, 323 N.C. 369, 373 S.E.2d 555 (1988).

Felony death by vehicle is not a lesser included offense of involuntary manslaughter while driving under the influence of alcohol. State v. Williams, 90 N.C. App. 615, 369 S.E.2d 832, cert. denied, 323 N.C. 369, 373 S.E.2d 555 (1988).

Intentional Act of Impaired Driving Required for Violation of § 20-141.4. — The phrase "intentionally causes the death of another person" as used within G.S. 20-141.4 refers not to the presence of a specific intent to cause death, but rather to the fact that the act which resulted in death is intentionally committed and is an act of impaired driving under this section. State v. Williams, 90 N.C. App. 615, 369 S.E.2d 832, cert. denied, 323 N.C. 369, 373 S.E.2d 555 (1988).

For case holding violation of former § 14-387 not proximate cause of fatal accident, see State v. Miller, 220 N.C. 660, 18 S.E.2d 143 (1942).

Violation of Section as Defense to Wrongful Death Claim. — Contributory negligence of plaintiffs' decedent, who was operating his vehicle in an impaired condition in violation of this section, was a defense to a wrongful death claim under this section based on defendants' alleged negligence in selling alcohol to an intoxicated person. Clark v. Inn West, 89 N.C. App. 275, 365 S.E.2d 682 (1988).

Plaintiff's wrongful death claim against a provider of alcohol alleging wilful and wanton negligence for serving the visibly intoxicated decedent alcohol after being requested to refrain from serving him was barred by the decedent's own actions in driving his vehicle while highly intoxicated. Sorrells v. M.Y.B. Hospitality Ventures, 332 N.C. 645, 423 S.E.2d 72 (1992).

Question of contributory negligence of plaintiff's decedent, who was killed in an accident while riding as a passenger in a car driven by defendant, where defendant admitted in his answer that he was driving while mentally and physically impaired in violation of this section, was for the jury. Baker v. Mauldin, 82 N.C. App. 404, 346 S.E.2d 240 (1986).

Admissibility of Results of Blood Test. — In a prosecution for drunken driving it is competent for an expert witness to testify as to the results of a test as to the alcoholic content of the defendant's blood, based on a sample taken less than an hour after the alleged offense, with defendant's consent. State v. Willard, 241 N.C. 259, 84 S.E.2d 899 (1954); State v. Moore, 245 N.C. 158, 95 S.E.2d 548 (1956).

Assuming blood specimen is obtained at or near the pertinent time and is identified and traced until chemical analysis thereof is made, testimony of a qualified expert (1) as to the making and results of a chemical analysis of such blood specimen to determine the alcoholic content thereof, and (2) as to the effects of certain percentages of alcohol in the bloodstream, is competent. State v. Paschal, 253 N.C. 795, 117 S.E.2d 749 (1961).

A qualified expert may testify as to the effect of certain percentages of alcohol in the bloodstream of human beings, provided the blood sample analyzed was timely taken, properly traced, and identified. State v. Webb, 265 N.C. 546, 144 S.E.2d 619 (1965).

Result of Breathalyzer Test Is Competent Evidence. — The result of a breathalyzer test, when the qualifications of the person making the test and the manner of making it meet the requirements of G.S. 20-139.1, is competent evidence. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Evidence of results of breathalyzer test gives rise to inference that defendant was under the influence. State v. Jenkins, 21 N.C. App. 541, 204 S.E.2d 919 (1974).

The result of a breathalyzer analysis is crucial to a conviction. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Proof of Violation of Section. — This section creates one offense which may be proved by either or both theories detailed in subdivisions (a)(1) and (a)(2). State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984).

Probable Cause for Stop and Search. — Despite lack of an observed and verifiable traffic code violation by suspect, his driving 20 miles per hour below the speed limit and weaving within his lane were actions sufficient to raise the suspicion of an impaired driver in a reasonable and experienced trooper's mind; fact that driver was not charged with a DUI offense after being stopped and questioned was not relevant to trooper's initial suspicions so as to invalidate stop and search of car. State v. Jones, 96 N.C. App. 389, 386 S.E.2d 217 (1989), appeal dismissed, 326 N.C. 366, 389 S.E.2d 809 (1990).

Probable Cause for Arrest. — Where petitioner was involved in a one-vehicle accident in which his car went off the road into a ditch, the accident occurred on a clear day in the middle of the afternoon, and petitioner told the arresting officer that he had fallen asleep at the wheel, the evidence surrounding the accident and petitioner's reason for its occurrence, coupled with the strong odor of alcohol detected from him, gave the officer reasonable grounds to arrest petitioner for impaired driving. Richardson v. Hiatt, 95 N.C. App. 196, 381 S.E.2d 866, rehearing granted, 95 N.C. App. 780, 384 S.E.2d 62 (1989).

Defense of Coercion, Compulsion, or Duress. — The trial court was correct in refusing to instruct the jury on the defense of coercion, compulsion, or duress, as there was no evidence that defendant faced threatening conduct of any kind at the time officer saw him driving while intoxicated; although evidence tended to show that defendant was justifiably in fear for his safety when he drove away from pedestrian pursuers, it did not tend to show that he was still justifiably fearful 30 minutes later after his pursuers had been left many miles behind. State v. Cooke, 94 N.C. App. 386, 380 S.E.2d 382, cert. denied, 325 N.C. 433, 384 S.E.2d 542 (1989).

Failure to Inform Defendant of Rights. — Where the defendant is not advised of his rights under G.S. 20-16.2(a), including, under G.S. 20-16.2(a)(5), the right to have another alcohol concentration test performed by a qualified person of his own choosing, the State's test is inadmissible in evidence. State v. Gilbert, 85 N.C. App. 594, 355 S.E.2d 261 (1987).

Statutory violations by magistrate, who failed to inform defendant of his rights to pretrial release under either the general provisions of G.S. 15A-511 or the more specific provisions of G.S. 15A-534.2, did not justify dismissal of driving while impaired charges. State v. Gilbert, 85 N.C. App. 594, 355 S.E.2d 261 (1987).

Violation as Grounds for Seeking Punitive Damages. — In an action arising out of an automobile accident, defendant's operation of a motor vehicle in violation of this section, and failure of four sobriety tests, evidenced a willful and wanton disregard for plaintiffs' rights sufficient to warrant the submission of the issue of punitive damages to the jury. Ivey v. Rose, 94 N.C. App. 773, 381 S.E.2d 476 (1989).

Punitive damages may be recovered against impaired drivers in certain situations without regard to the drivers' motives or intent. Huff v. Chrismon, 68 N.C. App.

525, 315 S.E.2d 711, cert. denied, 311 N.C. 756, 321 S.E.2d 134 (1984).

Improper Conviction as Violation of Code of Judicial Conduct. — Acts of respondent judge in convicting defendants of reckless driving when they were charged with driving while impaired were acts which respondent knew to be improper and ultra vires, or beyond the powers of his office; therefore respondent's actions constituted conduct in violation of Code Jud. Con., Canons 2A and 3A(1). In re Martin, 333 N.C. 242, 424 S.E.2d 118 (1993).

Applied in State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984); State v. Harrell, 96 N.C. App. 426, 386 S.E.2d 103 (1989); State v. Parisi, 135 N.C. App. 222, 519 S.E.2d 531 (1999); State v. Jones, 353 N.C. 159, 538 S.E.2d 917, 2000 N.C. LEXIS 894 (2000); State v. Davis, 142 N.C. App. 81, 542 S.E.2d 236, 2001 N.C. App. LEXIS 45 (2001); State v. McDonald, 151 N.C. App. 236, 565 S.E.2d 273, 2002 N.C. App. LEXIS 725 (2002); Efird v. Hubbard, 151 N.C. App. 577, 565 S.E.2d 713, 2002 N.C. App. LEXIS 753 (2002).

Cited in State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610; Camalier v. Jeffries, 340 N.C. 699, 460 S.E.2d 133; State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985); United States v. Canane, 622 F. Supp. 279 (W.D.N.C. 1985); State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986); Crow v. North Carolina, 642 F. Supp. 953 (W.D.N.C. 1986); State v. Hicks, 84 N.C. App. 237, 352 S.E.2d 275 (1987); State v. Warren, 84 N.C. App. 235, 352 S.E.2d 276 (1987); State v. Drayton, 321 N.C. 512, 364 S.E.2d 121 (1988); State v. Weaver, 91 N.C. App. 413, 371 S.E.2d 759 (1988); Davis v. Hiatt, 92 N.C. App. 748, 376 S.E.2d 44 (1989); Clark v. Inn W., 324 N.C. 415, 379 S.E.2d 23 (1989); State v. Bailey, 93 N.C. App. 721, 379 S.E.2d 266 (1989); State v. Golden, 96 N.C. App. 249, 385 S.E.2d 346 (1989); State v. Brunson, 96 N.C. App. 347, 385 S.E.2d 542 (1989); McDaniel v. DMV, 96 N.C. App. 495, 386 S.E.2d 73 (1989); State v. McDonald, 97 N.C. App. 322, 387 S.E.2d 666 (1990); Penuel v. Hiatt, 97 N.C. App. 616, 389 S.E.2d 289 (1990); State v. Bumgarner, 97 N.C. App. 567, 389 S.E.2d 425 (1990); State v. Garvick, 98 N.C. App. 556, 392 S.E.2d 115 (1990); State v. Brunson, 327 N.C. 244, 393 S.E.2d 860 (1990); State v. Gwyn, 103 N.C. App. 369, 406 S.E.2d 145 (1991); State v. Mooneyhan, 104 N.C. App. 477, 409 S.E.2d 700 (1991); State v. Ham, 105 N.C. App. 658, 414 S.E.2d 577 (1992); Berrier v. Thrift, 107 N.C. App. 356, 420 S.E.2d 206 (1992); State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); Camalier v. Jeffries, 113 N.C. App. 303, 438 S.E.2d 427 (1994); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994); State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994); State v. Snyder, 343 N.C. 61, 468 S.E.2d 221 (1996); State v. Crawford, 125 N.C. App. 279, 480 S.E.2d 422 (1997); State v. Shoff, 128 N.C. App. 432, 496 S.E.2d 590 (1998); Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 505 S.E.2d 131 (1998); State v. Pearson, 131 N.C. App. 315, 507 S.E.2d 301 (1998); Baker v. Provident Life & Accident Ins. Co., 171 F.3d 939 (4th Cir. 1999); State v. Moore, 132 N.C. App. 802, 513 S.E.2d 346 (1999); State v. Covington, 138 N.C. App. 688, 532 S.E.2d 221, 2000 N.C. App. LEXIS 775 (2000); McCrary v. Byrd, 136 N.C. App. 487, 524 S.E.2d 817, 2000 N.C. App. LEXIS 57 (2000); In re a Judge, No. 238 Brown, 351 N.C. 601, 527 S.E.2d 651, 2000 N.C. LEXIS 353 (2000); Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512, 2000 N.C. App. LEXIS 496 (2000); State v. Smith, 139 N.C. App. 209, 533 S.E.2d 518, 2000 N.C. App. LEXIS 887 (2000); State v. Lobohe, 143 N.C. App. 555, 547 S.E.2d 107, 2001 N.C. App. LEXIS 311 (2001); Iodice v. United States, 289 F.3d 270 (4th Cir. 2002); Davis v. N.C. Dep't of Crime Control & Pub. Safety, 151 N.C. App. 513, 565 S.E.2d 716, 2002 N.C. App. LEXIS 777 (2002); State v. Jordan, 155 N.C. App. 146, 574 S.E.2d 166, 2002 N.C. App. LEXIS 1621 (2002); State v. Hudgins, 167 N.C. App. 705, 606 S.E.2d 443, 2005 N.C. App. LEXIS 21 (2005); State v. Winslow, 169 N.C. App. 137, 609 S.E.2d 463, 2005 N.C. App. LEXIS 533 (2005); State v. Hurt, 361 N.C. 325, 643 S.E.2d 915, 2007 N.C. LEXIS 407 (2007); State v. McLamb, 186 N.C. App. 124, 649 S.E.2d 902, 2007 N.C. App. LEXIS 1981 (2007); State v. Haislip, 186 N.C. App. 275, 651 S.E.2d 243, 2007 N.C. App. LEXIS 2108 (2007); Harrell v. Bowen, 362 N.C. 142, 655 S.E.2d 350, 2008 N.C. LEXIS 26 (2008); State v. Barnard, 362 N.C. 244, 658 S.E.2d 643, 2008 N.C. LEXIS 338 (2008); State v. Hinchman, — N.C. App. —, 666 S.E.2d 199, 2008 N.C. App. LEXIS 1667 (2008); State v. Maready, 362 N.C. 614, 669 S.E.2d 564, 2008 N.C. LEXIS 985 (2008).

II. DRIVING UNDER THE INFLUENCE.

Meaning of "Under the Influence". — A person is under the influence of intoxicating liquor when he has drunk a sufficient quantity of intoxicating beverages to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. State v. Carroll, 226 N.C. 237, 37 S.E.2d 688 (1946); State v. Lee, 237 N.C. 263, 74 S.E.2d 654 (1953); State v. Turberville, 239 N.C. 25, 79 S.E.2d 359 (1953); State v. Nall, 239 N.C. 60, 79 S.E.2d 354 (1953); State v. Hairr, 244 N.C. 506, 94 S.E.2d 472 (1956); State v. Green, 251 N.C. 141, 110 S.E.2d 805 (1959); State v. Bledsoe, 6 N.C. App. 195, 169 S.E.2d

520 (1969); Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970); State v. Combs, 13 N.C. App. 195, 185 S.E.2d 8 (1971); State v. Jenkins, 21 N.C. App. 541, 204 S.E.2d 919 (1974).

A person is under the influence of an intoxicant whenever he has consumed sufficient alcohol to appreciably impair his mental or bodily faculties or both. State v. Bunn, 283 N.C. 444, 196 S.E.2d 777 (1973).

One is under the influence of an intoxicant when he has consumed some quantity of an intoxicating beverage, whether it be a small or a large amount, one drink or several drinks, one bottle or can of beer or more than one, so as to cause him to lose the normal control of his bodily faculties or his mental faculties, or both of those faculties, to such an extent that there is an appreciable impairment of either bodily or mental faculties. State v. Felts, 5 N.C. App. 499, 168 S.E.2d 483 (1969).

"Under the influence of an intoxicant" and "drunk" are not necessarily synonymous. Davis v. Rigsby, 261 N.C. 684, 136 S.E.2d 33 (1964). But see the earlier decision of State v. Carroll, 226 N.C. 237, 37 S.E.2d 688 (1946).

"Drunk," within the meaning of former G.S. 14-335, was not synonymous with "under the influence of intoxicating liquor." State v. Painter, 261 N.C. 332, 134 S.E.2d 638 (1964).

And One Need Not Be Drunk to Be Guilty of Driving Under the Influence. — It is not necessary for one to be drunk to violate prohibition against operating a motor vehicle while under the influence of some intoxicant, but a person need only be under the influence. State v. Felts, 5 N.C. App. 499, 168 S.E.2d 483 (1969).

Use of Blood Alcohol Level as Proof. — See State v. Lockamy, 65 N.C. App. 75, 308 S.E.2d 750 (1983), decided under former § 20-138.

Evidence was sufficient to convict defendant under the appreciably impaired prong of the statute but the jury was only given two options on the verdict sheet; thus, it was not possible to tell whether the jury found defendant guilty based on defendant's blood alcohol concentration level or due to the appreciable impairment of defendant's faculties. State v. Roach, 145 N.C. App. 159, 548 S.E.2d 841, 2001 N.C. App. LEXIS 581 (2001).

The statutory blood alcohol concentration (BAC) is not a sine qua non of driving under the influence. The State may prove driving under the influence where the BAC is entirely unknown or less than 0.10 (now 0.08). State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Breathalyzer Reading of 0.06 Does Not Create Presumption That Defendant Not Impaired. — Contention that because a blood alcohol concentration of 0.10 (now 0.08) or more is illegal per se under subdivision (a)(2) of this section, a breathalyzer reading of 0.06 must create a presumption that the defendant is not impaired is totally without merit and has no basis in statutory or case law. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

But a person drunk by the use of intoxicating liquor is necessarily under the influence of intoxicating liquor. State v. Stephens, 262 N.C. 45, 136 S.E.2d 209 (1964); Southern Nat'l Bank v. Lindsey, 264 N.C. 585, 142 S.E.2d 357 (1965).

The correct test is not whether the party had drunk or consumed a spoonful or a quart of intoxicating beverage, but whether a person is under the influence of an intoxicating liquor by reason of his having drunk a sufficient quantity of an intoxicating beverage to cause him to lose normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. State v. Ellis, 261 N.C. 606, 135 S.E.2d 584 (1964).

Intoxicating beverages affect different persons in different ways. Thus the courts have uniformly required proof of facts which would tend to show intoxication, rather than the mere consumption of alcoholic beverages. Atkins v. Moye, 8 N.C. App. 126, 174 S.E.2d 34, aff'd, 277 N.C. 179, 176 S.E.2d 789 (1970).

As to the elements of offense of driving under the influence, see State v. Haddock, 254 N.C. 162, 118 S.E.2d 411 (1961); State v. Kellum, 273 N.C. 348, 160 S.E.2d 76 (1968); State v. Carter, 15 N.C. App. 391, 190 S.E.2d 241 (1972); State v. Griggs, 27 N.C. App. 159, 218 S.E.2d 200 (1975); State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976); State v. Ray, 54 N.C. App. 473, 283 S.E.2d 823 (1981).

Prior convictions are not an element of the offense of driving while impaired, but are now merely one of several factors relating to punishment. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

Where there was evidence that defendant had a blood alcohol concentration (BAC) of .09 some two and one-half hours after accident, and no evidence of drinking between the time of the accident and the sample, and police officer smelled a moderate odor of alcohol on defendant's person at the accident scene, observed her slurred speech and glassy eyes, and gave his opinion that she had consumed some controlled substance to an appreciable degree that would have affected both her mental and physical faculties, the evidence was sufficient to go to the jury on the question of DUI, regardless of additional expert extrapolation evidence. State v. Catoe, 78 N.C. App. 167, 336 S.E.2d 691, supersedeas granted, 315 N.C. 186, 338 S.E.2d 107 (1985), cert. denied, 316 N.C. 380, 344 S.E.2d 1 (1986).

But Can Be Offered to Impeach Defen-

dant. — Trial court properly denied defendant's motion to dismiss for insufficient evidence, as testimony by the deputy who arrested defendant provided substantial evidence of defendant's impairment; an intoxilyzer test and field sobriety tests were not required to establish a defendant's faculties as being appreciably impaired, and the trial court properly denied defendant's motion in limine to suppress and bar the use of his prior DWI convictions, as a DWI conviction was a class 1 misdemeanor admissible for impeachment purposes under G.S. 8C-1, N.C. R. Evid. 609(a). State v. Gregory, 154 N.C. App. 718, 572 S.E.2d 838, 2002 N.C. App. LEXIS 1534 (2002).

The offense of driving under the influence requires an appreciable impairment of one's normal control of his bodily or mental faculties, or both. State v. Combs, 13 N.C. App. 195, 185 S.E.2d 8 (1971).

Showing of a Slight Effect on Defendant's Faculties Is Insufficient. — It is not sufficient for a conviction for driving under the influence for the State to show that defendant drove an automobile upon a highway within the State when he had drunk a sufficient quantity of intoxicating liquor to affect however slightly his mental and physical faculties. The State must show that he has drunk a sufficient quantity of intoxicating liquor to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties. State v. Hairr, 244 N.C. 506, 94 S.E.2d 472 (1956).

Violations Must Be Shown Beyond a Reasonable Doubt. — Before the State is entitled to a conviction for driving under the influence, it must show beyond a reasonable doubt that the defendant was driving a motor vehicle on a public highway of the State while under the influence of intoxicating liquor. State v. Carroll, 226 N.C. 237, 37 S.E.2d 688 (1946); State v. Lee, 237 N.C. 263, 74 S.E.2d 654 (1953); State v. Nall, 239 N.C. 60, 79 S.E.2d 354 (1953); State v. Hairr, 244 N.C. 506, 94 S.E.2d 472 (1956).

But Circumstantial Evidence May Suffice. — Though the evidence on the part of the State as to a violation is circumstantial, it may be sufficient to be submitted to a jury. State v. Newton, 207 N.C. 323, 177 S.E. 184 (1934).

Prima Facie Showing of Violation. — The fact that a motorist has been drinking, when considered in connection with faulty driving such as following an irregular course on the highway or other conduct indicating an impairment of physical or mental faculties, is sufficient, prima facie, to show a violation. State v. Hewitt, 263 N.C. 759, 140 S.E.2d 241 (1965); Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970); State v. Cartwright, 12 N.C. App. 4, 182 S.E.2d 203 (1971); State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

Aiders and Abettors Guilty as Principals. — The unlawful operation of a vehicle upon a highway within this State while under the influence of intoxicating liquor is a misdemeanor, and all who participate therein, as aiders and abettors or otherwise, are guilty as principals. State v. Nall, 239 N.C. 60, 79 S.E.2d 354 (1953).

When an owner places his motor vehicle in the hands of an intoxicated driver, sits by his side, and permits him, without protest, to operate the vehicle on a public highway while in a state of intoxication, the owner is as guilty as the man at the wheel. State v. Gibbs, 227 N.C. 677, 44 S.E.2d 201 (1947).

Evidence Insufficient to Implicate Friends of Drunk Driver. — The record did not contain substantial evidence that one, two or all of three minors aided and abetted defendant minor in committing the offense of driving while impaired under this section; while the record contained evidence that the three consumed alcoholic beverages together on the evening of the accident, and though they observed the defendant minor consume some of, or as much as, a six-pack of beer in a "short period of time." and did not stop him from driving while impaired, these activities did not render them guilty as principals of his driving while impaired offense. Smith v. Winn-Dixie Charlotte, Inc., 142 N.C. App. 255, 542 S.E.2d 288, 2001 N.C. App. LEXIS 87 (2001), cert. denied, 353 N.C. 452, 548 S.E.2d 528 (2001).

Driving under the influence in violation of statute is negligence per se. Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967); Arant v. Ransom, 4 N.C. App. 89, 165 S.E.2d 671 (1969).

It is negligence per se for one to operate an automobile while under the influence of an intoxicant. Davis v. Rigsby, 261 N.C. 684, 136 S.E.2d 33 (1964); Southern Nat'l Bank v. Lindsey, 264 N.C. 585, 142 S.E.2d 357 (1965); Wardrick v. Davis, 15 N.C. App. 261, 189 S.E.2d 746 (1972).

Defendant was guilty of negligence per se in operating his pickup truck while under the influence of intoxicating liquor in violation of statute. Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960).

It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle upon the highways within this State, and a violation is negligence. Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970).

But Causal Relation Must Be Shown to Constitute Actionable or Contributory Negligence. — Unquestionably a motorist is guilty of negligence if he operates a motor vehicle on the highway while under the influence of intoxicating liquor. Such conduct, however, will not constitute either actionable negligence or contributory negligence unless, like any other negligence, it is causally related to the accident. Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970). See also, Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

Mere proof that a motorist involved in a collision was under the influence of an intoxicant at the time does not establish a causal relation between his condition and the collision. His condition must have caused him to violate a rule of the road and to operate his vehicle in a manner which was a proximate cause of the collision. Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970).

Constitutional and Statutory Rights of Accused. — One who is detained by police officers under a charge of driving while under the influence of an intoxicant has the same constitutional and statutory rights as any other accused. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971); State v. Lawson, 285 N.C. 320, 204 S.E.2d 843 (1974).

Applicability of Miranda Rules. — After defendant was arrested and placed in patrol car, the rules of Miranda were applicable to him just as to any other person in custody on a criminal charge. State v. Lawson, 285 N.C. 320, 204 S.E.2d 843 (1974).

Right of Accused to Communicate with Counsel and Others. — The denial of a request for permission to contact counsel as soon as a person is charged with a crime involving the element of intoxication is a denial of a constitutional right, resulting in irreparable prejudice to his defense. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

When one is taken into police custody for an offense of which intoxication is an essential element, time is of the essence, as intoxication does not last. Thus, if one accused of driving while intoxicated is to have witnesses for his defense, he must have access to his counsel, friends, relatives, or some disinterested person within a relatively short time after his arrest. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

A defendant's guilt or innocence of the offense of driving under the influence depends upon whether he is intoxicated at the time of his arrest. His condition then is the crucial and decisive fact to be proven. Permission to communicate with counsel and friends is of no avail if those who come to the jail in response to a prisoner's call are not permitted to see for themselves whether he is intoxicated. In this situation, the right of a defendant to communicate with counsel and friends implies, at the very least, the right to have them see, observe and examine him, with reference to his alleged intoxication. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Application of a per se prejudice rule as set forth in State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971) is inappropriate in cases involving a violation of subdivision (a)(2) of this section, driving with an alcohol concentration of 0.10 (now 0.08) or more. State v. Knoll, 84 N.C. App. 228, 352 S.E.2d 463 (1987), rev'd on other grounds, 322 N.C. 535, 369 S.E.2d 558 (1988).

Under this section, as amended, denial of access is no longer inherently prejudicial to a defendant's ability to gather evidence in support of his innocence in every driving while impaired case, since an alcohol concentration of 0.10 (now 0.08) is sufficient. State v. Gilbert, 85 N.C. App. 594, 355 S.E.2d 261 (1987), distinguishing State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971), which was decided when the statute provided that a 0.10 (now 0.08) alcohol concentration merely created an inference of intoxication.

Admissibility of Horizontal Gaze Nystagmus Test. — The state's failure to lay a proper foundation for the admission of a horizontal gaze nystagmus test was reversible error, where the defendant was convicted for driving while impaired as the defendant met his burden of showing a reasonable possibility that a different outcome would have been reached had the test results not been erroneously admitted. State v. Helms, 348 N.C. 578, 504 S.E.2d 293 (1998).

The administration of a breath analysis is not a critical stage of the prosecution for driving while impaired entitling defendant to counsel. For this reason, it was not error for the trial court to refuse to dismiss the driving while impaired charge based on a violation of defendant's right under U.S. Const., Amend. VI, to counsel at a critical stage of the prosecution. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

There is no constitutional right to have an attorney present prior to submitting to chemical analysis. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Odor of Alcohol Insufficient to Show that Driver Is under Influence. — An odor of alcohol on the breath of the driver of an automobile is evidence that he has been drinking. However, an odor, standing alone, is not evidence that a driver is under the influence of an intoxicant, and the mere fact that one has had a drink will not support such a finding. Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970); State v. Cartwright, 12 N.C. App. 4, 182 S.E.2d 203 (1971).

Admissibility of Officer's Opinion. — In a prosecution for drunken driving, the arresting officer may be asked his opinion as to whether at the time the arrest was made the defendant was under the influence. State v. Warren, 236 N.C. 358, 72 S.E.2d 763 (1952).

In a prosecution for driving under the influence, two highway patrolmen who investigated the accident in which defendant was involved just before his arrest were properly allowed to testify that in their opinion defendant was under the influence of intoxicating liquor. State v. Mills, 268 N.C. 142, 150 S.E.2d 13 (1966).

Admissibility of Opinion of Lay Witness. — A lay witness is competent to testify whether or not in his opinion a person was under the influence of an intoxicant on a given occasion on which he observed him. State v. Willard, 241 N.C. 259, 84 S.E.2d 899 (1954).

Evidence Held Insufficient for Conviction. — Where officers who reached the scene of an accident some 30 minutes after it occurred testified that in their opinion defendant driver was intoxicated or under the influence of something, and one of them testified that he smelled something on defendant's breath, but both testified that they did not know whether defendant's condition was due to drink or to injuries sustained by him in the accident, such evidence raised no more than a suspicion or conjecture as to whether defendant was driving under the influence of liquor or narcotic drugs, and defendant's motion as of nonsuit should have been allowed. State v. Hough, 229 N.C. 532, 50 S.E.2d 496 (1948).

Testimony of two witnesses to the effect that from the detection of some "foreign" odor of an intoxicant from the mouth of a man whom they had not seen before, who had been knocked unconscious by a blow on the head, they were of opinion that he was under the influence of intoxicating liquor, standing alone, was insufficient to constitute substantial evidence that the man, while driving an automobile on the highway, had been under the influence of intoxicants to the extent held necessary in State v. Carroll, 226 N.C. 237, 37 S.E.2d 688 (1946), to constitute a violation. State v. Flinchem, 228 N.C. 149, 44 S.E.2d 724 (1947).

In a prosecution for involuntary manslaughter incident to driving under the influence, defendant's admission of being "intoxicated" or having "consumed too much beer" at 2:30 a.m. to 3:00 a.m. was sufficient evidence from which the jury could have inferred that he was impaired between 1:05 a.m. and 1:52 a.m., the time of the fatal accident. State v. Brown, 87 N.C. App. 13, 359 S.E.2d 265 (1987).

No Double Jeopardy Violation. — Defendant's conviction on a charge of habitual impaired driving did not violate defendant's rights to be free of double jeopardy; recidivist statutes, such as habitual impaired driving, survived constitutional challenges regarding double jeopardy because they increased the severity of the punishment for the crime being prosecuted; they did not punish a previous crime a second time. State v. Bradley, 181 N.C. App. 557, 640 S.E.2d 432, 2007 N.C. App. LEXIS 251 (2007).

Evidence of Impairment Held Sufficient. — In addition to evidence showing that defendant had a blood alcohol content of 0.06, evidence that defendant was arrested by a police officer who testified that in her opinion, defendant was under the influence of alcohol based on observation of defendant, defendant's driving on the occasion in question, the odor of alcohol about her person and her inability to perform satisfactorily certain sobriety tests constituted substantial evidence, separate and apart from the breathalyzer result, that defendant's mental and physical faculties were appreciably impaired under subdivision (a)(1) of this section. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Where trooper could have placed defendant under arrest for not carrying his driver's license, but merely choose to ask defendant to step back to the patrol car so that he could check defendant's license information and so that he could further investigate defendant's intoxication based upon defendant's unsteady movements and the smell of alcohol, and after defendant failed the field sobriety tests he was placed under arrest and advised of his rights, the seizure was constitutionally permissible and there was sufficient probable cause for arrest. State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

Police officer's testimony that the officer observed the defendant driving on a street that was twice the width of a normal street out in the county and that the officer formed an opinion that the defendant was appreciably impaired after conducting a field sobriety test was sufficient to support the defendant's conviction for driving while impaired. State v. Mark, 154 N.C. App. 341, 571 S.E.2d 867, 2002 N.C. App. LEXIS 1447 (2002), aff'd, 357 N.C. 242, 580 S.E.2d 693 (2003).

Trial court did not err in allowing expert testimony that defendant's blood alcohol content at the time of the crash was 0.08 based on an average alcohol elimination rate of 0.0165 because the State was not required to establish that level to prove that defendant was driving while impaired, and the evidence was sufficient for a DWI conviction regardless of the expert's testimony; the evidence established (1) that a trooper smelled an odor of alcohol on defendant's person at the accident scene, (2) that defendant needed assistance with walking to the patrol car, (3) that defendant had difficulty writing defendant's statement on the appropriate lines, (4) that defendant had a "blank face," and (5) that defendant did not perform satisfactorily on field sobriety tests administered by the trooper. State v. Taylor, 165 N.C. App. 750, 600 S.E.2d 483, 2004 N.C. App. LEXIS 1519 (2004).

Conviction for impaired driving was supported by sufficient evidence, including evidence that defendant's driving was erratic, that she accelerated to hit a police vehicle after a police chase, that defendant admitted she had consumed alcohol before driving, a fact confirmed by a breathalyzer result showing a 0.07 breath alcohol concentration, and that an open half-filled bottle of vodka was found in the passenger area of her vehicle. State v. Wood, 174 N.C. App. 790, 622 S.E.2d 120, 2005 N.C. App. LEXIS 2614 (2005).

Substantial evidence supported the trial court's denial of defendant's request for dismissal of the charge of driving while impaired under G.S. 20-138.1(a). The evidence showed that: (1) defendant had been drinking at a party shortly before defendant's arrest; (2) defendant had been operating the motor vehicle in question on a road shortly before defendant's arrest; (3) defendant was operating the vehicle well above the speed limit on the road and drove on the shoulder of the road; (4) defendant's eyes were red and glassy; (5) defendant smelled of alcohol; and (6) defendant had trouble maintaining defendant's balance while walking. State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008).

Prescription Drug as Impairing Substance. — Expert testimony that Floricet, the drug defendant alleged he took prior to driving, was an impairing substance and that a healthcare professional should have warned defendant of its effects led to the conclusion that defendant knew or should have known that it could impair him, and was thus that he was on notice that, by driving after taking Floricet, he risked crossing over the line into the territory of proscribed conduct. State v. Highsmith, 173 N.C. App. 600, 619 S.E.2d 586, 2005 N.C. App. LEXIS 2123 (2005).

Evidence Held Sufficient to Go to Jury. — Evidence that defendant was intoxicated was held amply sufficient to be submitted to the jury even in the absence of expert testimony as to the alcoholic content of defendant's blood. State v. Willard, 241 N.C. 259, 84 S.E.2d 899 (1954).

Evidence that defendant was highly intoxicated when sheriff caught up with him after a chase was sufficient to take charge of driving under the influence of intoxicants to the jury. State v. Garner, 244 N.C. 79, 92 S.E.2d 445 (1956).

The State's evidence was sufficient to be submitted to the jury on the issue of whether defendant was guilty of drunken driving where it tended to show that defendant was driving on the wrong side of the road, that he had a strong odor of alcohol about him, that he was unsteady on his feet and that he had half a fifth of whiskey in his truck. State v. Cartwright, 12 N.C. App. 4, 182 S.E.2d 203 (1971).

For additional cases holding evidence sufficient for submission to the jury, see State v. Blankenship, 229 N.C. 589, 50 S.E.2d 724 (1948). See State v. Sawyer, 230 N.C. 713, 55 S.E.2d 464 (1949); State v. Simpson, 233 N.C. 438, 64 S.E.2d 568 (1951); State v. Cole, 241 N.C. 576, 86 S.E.2d 203 (1955); State v. St. Clair, 246 N.C. 183, 97 S.E.2d 840, modified on other grounds, 247 N.C. 228, 100 S.E.2d 493 (1957); State v. Green, 251 N.C. 40, 110 S.E.2d 609 (1959); State v. Mills, 268 N.C. 142, 150 S.E.2d 13 (1966); State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

Evidence held sufficient for a reasonable jury to infer that defendant who was found asleep in driver's seat in car which had run off the road and into a fence was under the influence of an impairing substance when he drove the vehicle. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Defendant's electric scooter, which was not self-balancing, with its two wheels in tandem, and which did not fall within the two statutory exceptions from a vehicle under G.S. 20-138.1(e) with regard to horses, bicycles, and lawnmowers or G.S. 20-4.01(49) as to transportation for a person with a mobility impairment, fell within the legislature's definition of vehicle in G.S. 20-4.01(49) and, because the evidence at trial showed that his breath alcohol concentration following arrest was 0.13, there was sufficient evidence to uphold defendant's conviction for impaired driving under G.S. 20- 138.1. State v. Crow, 175 N.C. App. 119, 623 S.E.2d 68, 2005 N.C. App. LEXIS 2747 (2005).

Denial of motion to dismiss was proper as the evidence could have supported a reasonable juror's conclusion that defendant could be found guilty under either prong of the driving while impaired statute. State v. Teate, 180 N.C. App. 601, 638 S.E.2d 29, 2006 N.C. App. LEXIS 2515 (2006).

A person may be "under the influence" of intoxicants and yet be capable of a specific intent to kill. State v. Medley, 295 N.C. 75, 243 S.E.2d 374 (1978).

Evidence was sufficient to go to jury where defendant was involved in an automobile accident, at the accident scene defendant's breath smelled of alcohol, his speech was slurred, his eyes were red, glassy, and watery, he was swaying, staggering, and generally so unsteady on his feet that he had to use police car to steady himself, and he passed out on the way to the police station and again while waiting to be tested at the police station. State v. Barber, 93 N.C. App. 42, 376 S.E.2d 497, cert. denied, 324 N.C. 578, 381 S.E.2d 775 (1989).

III. DRIVING WITH 0.10 (NOW 0.08) PERCENT OR MORE ALCOHOL IN BLOOD.

Editor's Note. *— Most of the cases cited in the annotations under "III." were decided under this section as it read prior to the 1993 amendment, which reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

As to the elements of this offense, see State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976); State v. Donald, 51 N.C. App. 238, 275 S.E.2d 531 (1981).

Source of Alcohol Need Not Be Intoxicating Beverage. — The primary purpose for which the General Assembly enacted prohibition against driving with specific concentration of alcohol in blood was to regulate conduct for the safety of the public using the State's highways, and it would be contrary to the legislative intent to read into it a requirement that the source of alcohol be an intoxicating beverage. A person whose blood contains 0.10 (now 0.08) percent or more by weight of alcohol, regardless of the source of the alcohol, and who drives upon the highways within the State, violates the prohibition. State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976), cert. denied, 272 N.C. 267, 233 S.E.2d 394 (1977).

And State Need Not Prove Defendant Knew He Was Drinking Alcohol. — In order to convict a person of driving with a blood alcohol content of 0.10 (now 0.08) percent or more, the State need not prove that defendant must have known or had reasonable grounds to believe that he was drinking alcohol. State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976), cert. denied, 292 N.C. 267, 233 S.E.2d 394 (1977).

It is negligence per se for person with a blood alcohol concentration of 0.10 (now 0.08) or more to operate a motor vehicle. Hinkamp v. AMC, 735 F. Supp. 176 (E.D.N.C. 1989), aff'd, 900 F.2d 252 (4th Cir. 1990).

Expression of Concentration in Grams Per Milliliters or in Liters Not Required. — There is no requirement in this section or elsewhere in the Motor Vehicle Code that a person's alcohol concentration be expressed in terms of grams per milliliters of blood or liters of breath, nor have the courts interpreted this section as requiring such specificity; moreover, where both the chemical analyst who testified about the test results and the trial court defined the term "alcohol concentration" for the jury so that it was completely clear what was meant by the term, there was no error in the admission of the test results. State v. Jones, 76 N.C. App. 160, 332 S.E.2d 494 (1985).

Right of Accused to Communicate with Counsel and Others. — Application of a per se prejudice rule as set forth in State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971) is inappropriate in cases involving a violation of subdivision (a)(2) of this section, driving with an alcohol concentration of 0.10 (now 0.08) or more. State v. Knoll, 84 N.C. App. 228, 352 S.E.2d 463 (1987), rev'd on other grounds, 322 N.C. 535, 369 S.E.2d 558 (1988).

Defendant Has Burden to Prove Prejudice. — In cases arising under G.S. 20-138.1(a)(2), prejudice will not be assumed to accompany a violation of defendant's statutory rights, but rather, defendant must make a showing that he was prejudiced in order to gain relief. State v. Knoll, 322 N.C. 535, 369 S.E.2d 558 (1988).

Defendants made a sufficient showing of a substantial statutory violation and of the prejudice arising therefrom to warrant relief where the evidence showed that magistrates failed to advise defendants of their rights under G.S. 15A-511(b), 15A-533(b) and 15A-534(c) and deprived defendants of their rights to secure their liberty for a significant time during a critical period. State v. Knoll, 322 N.C. 535, 369 S.E.2d 558 (1988).

Proof of Prejudice Resulting from Denial of Access. — While a defendant charged with an offense under this section might be prejudiced by a denial of access or unwarranted detention, at the very least, such defendant must show that lost evidence or testimony would have been helpful to his defense, that the evidence would have been significant, and that the evidence or testimony was lost as a result of the statutory deprivations of which he complains. State v. Knoll, 84 N.C. App. 228, 352 S.E.2d 463 (1987), rev'd on other grounds, 322 N.C. 535, 369 S.E.2d 558 (1988).

Proof. — Once it is determined that the chemical analysis of defendant's breath is valid, then a reading of 0.10 (now 0.08) constitutes reliable evidence and is sufficient to satisfy the State's burden of proof as to this element of the offense of driving while impaired. State v. Shuping, 312 N.C. 421, 323 S.E.2d 350 (1984).

Evidence Corroborating Defendant's Admissions. — Evidence aliunde admissions by defendant was sufficient to corroborate defendant's admission that he drove vehicle which was found wrecked on a public highway or vehicular area after he had consumed alcohol and, when considered with his admissions, was sufficient to support a reasonable inference that at the time he was driving the motor vehicle he had consumed a sufficient amount of alcohol to raise his blood alcohol level to 0.10% (now 0.08) or greater at a relevant time after driving. State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986).

Extrapolation Evidence. — In prosecution in which the jury found defendant guilty of DUI and driving on the wrong side of the road, testimony of expert witness that the average person displays a certain rate of decline in blood alcohol concentration (BAC) in the hours after the last consumption of alcohol, and that based on that average rate of decline, defendant's BAC, which was .09 some two and one-half hours after the accident, would have been approximately 0.13 at the time of the accident, was not improper. State v. Catoe, 78 N.C. App. 167, 336 S.E.2d 691, supersedeas granted, 315 N.C. 186, 338 S.E.2d 107 (1985), cert. denied,

316 N.C. 380, 344 S.E.2d 1 (1986).

Willful Violation. — Defendant's .181 blood alcohol concentration unquestionably demonstrated a willful violation of G.S. 20-138.1. State v. Purdie, 93 N.C. App. 269, 377 S.E.2d 789 (1989).

Lesser Included Offense. — As to offense of driving with a blood alcohol content of 0.10 (now 0.08) percent or more being a lesser included offense of driving under the influence, see State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).

Conviction of the lesser offense constituted an acquittal in the district court of the greater offense. State v. McKenzie, 292 N.C. 170, 232 S.E.2d 424 (1977).

Mandatory Revocation of License. — Under G.S. 20-17(a)(2), defendant's driver's license was subject to mandatory revocation for one year because she was convicted under G.S. 20-138.1 for driving with an alcohol concentration of 0.16. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

IV. PROCEDURE.

Warrant Held Sufficient. — A warrant charging defendant with driving under the influence and reckless driving, which were treated as separate counts, was sufficient since each count charged all the essential elements constituting the violation of law charged. State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

Right to Have Breathalyzer Test Witnessed. — To deny defendant access to a witness to observe his breathalyzer test when the State's sole evidence of the offense of driving while impaired is the personal observations of the authorities would constitute a flagrant violation of defendant's constitutional right to obtain witnesses under N.C. Const., Art. I, § 23 as a matter of law and would require that the charges be dismissed. State v. Ferguson, 90 N.C. App. 513, 369 S.E.2d 378, cert. denied, 323 N.C. 367, 373 S.E.2d 551 (1988).

Jury is responsible for finding facts which support the conclusion that the elements of the offense have been proven beyond a reasonable doubt by the State. Once the offense is so proved, the jury has no further responsibility; it does not find aggravating or mitigating circumstances, or the existence of grossly aggravating factors. The jury only determines guilt or innocence of driving while impaired. Field v. Sheriff of Wake County, 654 F. Supp. 1367 (E.D.N.C. 1986), rev'd on other grounds, 831 F.2d 530 (4th Cir. 1987).

Bifurcated Procedure Constitutional. — The bifurcated procedure that the legislature has established for impaired driving cases, with the jury determining whether this section has been violated and the judge determining the length of punishment required under G.S. 20-179, is constitutional. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Evidence of Wanton Conduct Held Sufficient to Go to Jury. — In a negligence action, the evidence of the defendant's wanton conduct was sufficient to go to the jury, where defendant admitted: awareness of her own substantial intoxication, indifference to her duty under this section to avoid operating a motor vehicle while impaired, and obliviousness to the duty under G.S. 20-158 to stop at the five stoplights between the cocktail lounge and the accident. It was for the jury to determine whether defendant's negligence evinced a wilful or reckless indifference to the rights of others, and then, whether her wilful or wanton conduct was the proximate cause of the accident. King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758, cert. denied, 315 N.C. 184, 337 S.E.2d 857 (1985).

Similarity Between North and South Carolinas' Driving While Impaired Statutes Noticed Judicially. — Trial court did not err in taking judicial notice of similarity between South Carolina impaired driving statutes and North Carolina statute. Sykes v. Hiatt, 98 N.C. App. 688, 391 S.E.2d 834 (1990).

Defendant Must Show Substantial Statutory Violation and Resulting Prejudice for Dismissal Under Subdivision (a)(2) of This Section. — To warrant dismissal of charge under subdivision (a)(2), defendant must make sufficient showing of substantial statutory violation and of prejudice arising therefrom. State v. Eliason, 100 N.C. App. 313, 395 S.E.2d 702 (1990).

Trial court did not err in denying defendant's pretrial motion to dismiss the G.S. 20-138.1 charge of driving while impaired against defendant because even though (1) there was no evidence, pursuant to G.S. 15A-534.2, that defendant was required to be held because the impairment of defendant's physical or mental faculties presented a danger, if defendant were released, of physical injury to defendant or others or damage to property, and (2) there was no evidence, pursuant to G.S. 15A-534(b), that defendant would pose a danger of injury to any person if defendant were released under conditions other than a secured bond, defendant was not irreparably prejudiced in the preparation of defendant's defense by the denial of defendant's G.S. 15A-533 right to timely pretrial release; defendant was not denied access to friends and family, such that defendant lost the opportunity to gather evidence. State v. Labinski, 188 N.C. App. 120, 654 S.E.2d 740, 2008 N.C. App. LEXIS 90 (2008).

Evidence Held Admissible. — No plain error existed in a trial court admitting evidence of defendant's empty prescription pill bottle, testimony by an officer identifying the pills from the label, and testimony by a pharmacist about the interaction between the pills and alcohol, as the evidence was relevant to show that defendant, who had been drinking, was driving while impaired. State v. Edwards, 170 N.C. App. 381, 612 S.E.2d 394, 2005 N.C. App. LEXIS 992 (2005).

V. INSTRUCTIONS.

Evidence Held Sufficient to Support Instruction. — Evidence tending to show that defendant was seen driving his truck some 30 minutes before a highway patrolman reached the scene of the accident, that defendant had then been arrested and was in the custody of a deputy sheriff, that defendant was in a highly intoxicated condition, and that no intoxicating liquor was found in or about the vehicle was held sufficient to support an instruction in regard to the law if defendant at the time of the accident was driving while under the influence of intoxicating liquor. State v. Lindsey, 264 N.C. 588, 142 S.E.2d 355 (1965).

For case holding that the issue of intoxication was improperly submitted to the jury, see Atkins v. Moye, 8 N.C. App. 126, 174 S.E.2d 34, aff'd, 277 N.C. 179, 176 S.E.2d 789 (1970).

Instruction Upheld. — In a prosecution for drunken driving under former G.S. 14-387, an instruction that defendant was under the influence of intoxicating liquor if he had drunk enough to make him act or think differently than he would have acted or thought if he had not drunk any, regardless of the amount he drank, was held without error. State v. Harris, 213 N.C. 648, 197 S.E. 142 (1938).

In a prosecution for driving under the influence, an instruction that defendant was under the influence of intoxicants if he had drunk a sufficient amount to make him think or act differently than he would otherwise have done, regardless of the amount, and that he was "under the influence" if his mind and muscles did not normally coordinate or if he was abnormal in any degree from intoxicants was held without error. State v. Biggerstaff, 226 N.C. 603, 39 S.E.2d 619 (1946). But see, State v. Edwards, 9 N.C. App. 602, 176 S.E.2d 874 (1970), and State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971), wherein a similar instruction was held error.

In an instruction stating the degree of impairment of the faculties necessary to render one "under the influence" of intoxicating liquor, the use of the word "perceptibly" instead of the word "appreciably," without explanation of what it meant, was not error. While the language of the rule in State v. Carroll, 226 N.C. 237, 37 S.E.2d 688 (1946), is preferred, there is not in the word "perceptible" sufficient difference in meaning and common understanding for the rule to have been misunderstood by the jury. State v. Lee, 237 N.C. 263, 74 S.E.2d 654 (1953).

An instruction that "under the influence of intoxicating liquor" meant that defendant at the time and place in question had by reason of having drunk some intoxicating beverage lost the normal control of the powers or functions of his body or mind, or both, so that such loss could be estimated or recognized, properly expressed the intent of the statute. State v. Combs, 13 N.C. App. 195, 185 S.E.2d 8 (1971).

An instruction that a person is under the influence of some intoxicating beverage within the meaning of the statute when he has drunk a sufficient quantity of some intoxicating beverage to cause him to lose the normal control of his mental or bodily faculties, his mental or bodily capabilities, to such an extent that there is appreciable or noticeable impairment of either one or both of those faculties was without error. State v. Robinette, 13 N.C. App. 224, 185 S.E.2d 9 (1971), cert. denied, 280 N.C. 304, 186 S.E.2d 178 (1972).

Disjunctive Instructions and Nonunaminous Verdicts. — Permitting the jury to consider the DWI defendant's driving both at the time of the accident as well as when he later returned to the accident scene in his truck did not result in him being convicted on less than a unanimous verdict, since this section proscribes a single offense, not crimes in the disjunctive, and even if all jurors did not agree as to the time and extent of the defendant's drunkenness, they unanimously found him guilty of the single offense of impaired driving. State v. McCaslin, 132 N.C. App. 352, 511 S.E.2d 347 (1999).

Jury instruction proper on the definition of "public vehicular area" because members of the public using car wash premises deserved no less protection from impaired drivers in the parking lot than on public streets or highways. State v. Robinette, 124 N.C. App. 212, 476 S.E.2d 387 (1996).

Instruction Held Erroneous. — An instruction that a person is under the influence of intoxicating liquor when "he has drunk a sufficient quantity of alcoholic liquor or beverage to affect, however slightly, his mind and his muscles, his mental and his physical faculties" is erroneous. State v. Carroll, 226 N.C. 237, 37 S.E.2d 688 (1946).

Trial judge's instruction that "a person would be under the influence of intoxicants if he had drunk a sufficient amount to make him think or act differently than he would otherwise have done, regardless of the amount, and he would be under the influence if his mind and muscles did not normally coordinate, or if he was abnormal in any degree from intoxicants" was erroneous. State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971). But see, State v. Biggerstaff, 226 N.C. 603, 39 S.E.2d 619 (1946), wherein a similar instruction was approved.

In a drunken driving prosecution, trial court's instruction that a person is under the influence of intoxicants if he has consumed a sufficient amount to make him think or act differently than he otherwise would have done, regardless of the amount that he consumed, and that one is under the influence if his mind and muscles do not normally coordinate or if he is abnormal in any degree, is reversible error. State v. Edwards, 9 N.C. App. 602, 176 S.E.2d 874 (1970). But see, State v. Biggerstaff, 226 N.C. 603, 39 S.E.2d 619 (1946), wherein a similar instruction was approved.

Judgment convicting defendant of driving while impaired would be vacated where magistrate judge instructed the jury that it could rely on either of two independent grounds in determining whether defendant drove his vehicle while under the influence, as the jury could not legally convict him on the second ground, i.e., that the defendant had a blood alcohol concentration of at least .10 percent, since the court had suppressed evidence of blood alcohol concentration. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

Defendant arrested for driving while impaired was entitled to an instruction on the defense of entrapment where a jury could find defendant was not predisposed to drive while impaired; the officer who first encountered defendant when defendant was sleeping in his truck knew defendant was impaired; although defendant was not doing anything illegal, the officer told defendant to "move along"; at 4:30 a.m. in rainy weather the officer knew driving was defendant's only realistic means of "moving along"; when defendant left, the officer was waiting in the dark with his lights off; and as soon as defendant drove away the officer arrested him for driving while impaired. State v. Redmon, 164 N.C. App. 658, 596 S.E.2d 854, 2004 N.C. App. LEXIS 970 (2004).

Inadvertent use by the trial judge of the word "qualities" in place of the word "faculties" at one point in the charge could not have in any way misled the jury to defendant's prejudice. State v. Bledsoe, 6 N.C. App. 195, 169 S.E.2d 520 (1969).

Use of the term "any beverage containing alcohol" rather than the term "intoxicating beverage" in the court's charge defining the expression "under the influence of intoxicating liquor" in a prosecution for drunken driving was not prejudicial. State v. Nall, 239 N.C. 60, 79 S.E.2d 354 (1953).

Instruction on Breathalyzer Test. — In a prosecution for driving while under the influence of intoxicating liquor, there is no requirement that the jury be instructed that they must find that the breathalyzer test was administered in accordance with the pertinent regulations. State v. Jenkins, 21 N.C. App. 541, 204 S.E.2d 919 (1974).

Charge as to Good Character of Defendant. — Where defendant was charged with operating a motor vehicle on the public highway while under the influence of intoxicating liquor, in the absence of a request it was not incumbent upon the trial judge to charge specifically as to the effect of evidence of the good character of the defendant. This was not an essential feature of the case. State v. Glatly, 230 N.C. 177, 52 S.E.2d 277 (1949).

Instruction Not Mandated. — It is not mandated that the offense of driving with a blood alcohol content of 0.10 (now 0.08) percent or more be instructed on every time the offense of driving under the influence is charged. State v. McLawhorn, 43 N.C. App. 695, 260 S.E.2d 138 (1979), cert. denied, 299 N.C. 123, 261 S.E.2d 925 (1980).

In a prosecution for driving under the influence of intoxicating liquor, second offense, and driving with a revoked license, fourth offense, where evidence was introduced which indicated that a breathalyzer test revealed 0.11 percent alcohol by blood weight in defendant, it was not error to fail to instruct the jury on the offense of operating a vehicle on a public highway when blood alcohol content is 0.10 (now 0.08) percent by weight, since, although the instruction could have been given, the omission of the instruction was to defendant's benefit, since to convict defendant of driving under the influence, the State had to prove beyond a reasonable doubt that defendant was under the influence of alcoholic beverages, while for a conviction of driving with a blood alcohol content of 0.10 (now 0.08) percent or more the State only needed to prove that the amount of alcohol in defendant's blood was 0.10 (0.08) percent or more by weight. Thus, by not instructing on the latter motor vehicle violation, the trial judge benefited defendant and handicapped the State. State v. McLawhorn, 43 N.C. App. 695, 260 S.E.2d 138 (1979), cert. denied, 299 N.C. 123, 261 S.E.2d 925 (1980).

In a prosecution for driving while impaired, the court was not required to instruct the jury that the breathalyzer result should not be considered by them unless they found first that the test was performed in accord with regulations promulgated by the Commission of Health Services [now the Commission for Public Health]. State v. DeVane, 81 N.C. App. 524, 344 S.E.2d 362 (1986).

Failure to Instruct as to Subdivision (a)(2) Not Error Where Breathalyzer Reading Was 0.06. — Evidence of a per se 0.10 (now 0.08) violation under subdivision (a)(2) of this section was not sufficient to submit to the jury where breathalyzer result indicated a blood alcohol content of 0.06, and accordingly, it was not error for the trial court to fail to instruct the jury concerning subdivision (a)(2) on its own motion. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

For case holding instructions prejudicial where one of two defendants was stated by the court to be the driver, see State v. Swaringen, 249 N.C. 38, 105 S.E.2d 99 (1958).

Increase in Punishment Based on Aggravating Factor Did Not Deprive Right to Jury. — A trial judge's increasing punishment under the Safe Roads Act of 1983 after a finding of a grossly aggravating factor, that the defendant had a prior conviction for a similar offense within seven years, did not in any way deprive the defendant of his right to jury trial. State v. Denning, 76 N.C. App. 156, 332 S.E.2d 203 (1985), modified and aff'd, 316 N.C. 523, 342 S.E.2d 855 (1986).

The trial court did not err or violate double jeopardy principles in sentencing the defendant for both impaired driving and second degree murder. Driving while impaired is not a lesser included offense of second degree murder. State v. McAllister, 530 S.E.2d 859, 2000 N.C. App. LEXIS 600 (2000).

Serious Injury to Another Is Sentencing Factor. — Whether the defendant seriously injured another person was not an element of the crime of driving while impaired; it was a sentencing factor that the General Assembly deemed to be important in punishing those convicted of driving while impaired. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

VI. SENTENCING.

Fair Sentencing Act. — A conviction of driving while impaired under this section, irrespective of the level of punishment imposed, constitutes a prior conviction of an offense punishable by more than sixty days' imprisonment for purposes of sentencing under the Fair Sentencing Act. State v. Santon, 101 N.C. App. 710, 401 S.E.2d 117 (1991).

Increase in Punishment Based on Aggravating Factor Did Not Deprive Right to Jury. — A trial judge's increasing punishment under the Safe Roads Act of 1983 after a finding of a grossly aggravating factor, that the defendant had a prior conviction for a similar offense within seven years, did not in any way deprive the defendant of his right to jury trial. State v. Denning, 76 N.C. App. 156, 332 S.E.2d 203 (1985), modified and aff'd, 316 N.C. 523, 342 S.E.2d 855 (1986).

Failure to Submit Aggravating Factors to Jury. — Trial court erred in failing to submit aggravating factors to the jury before imposing an aggravated sentence on defendant for his conviction of driving while impaired; as defendant was entitled to a jury trial on the charge, any aggravating factor had to be submitted to the jury before an aggravated sentence could be imposed. State v. Speight, 359 N.C. 602, 614 S.E.2d 262, 2005 N.C. LEXIS 645 (2005), vacated, remanded, North Carolina v. Speight, 126 S. Ct. 2977 (U.S. 2006) (as to Blakely error being subject to harmless review).

Serious Injury to Another Is Sentencing Factor. — Whether the defendant seriously injured another person was not an element of the crime of driving while impaired; it was a sentencing factor that the General Assembly deemed to be important in punishing those convicted of driving while impaired. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

The existence of serious injury is not an element of the crime of impaired driving but merely a sentencing factor. Thus, in a sentencing hearing conducted after defendant pled guilty to driving while impaired, the trial court did not violate the Constitution by finding that defendant had caused serious injury as a result of his impaired driving, one of the aggravating factors in G.S. 20-179. Field v. Sheriff of Wake County, 831 F.2d 530 (4th Cir. 1987).

Trial Court's Decision to Grant Continuance and Clarity of Charging Instrument Not Sentencing Factors. — Where defendant's assignments of error related to the trial court's decision to grant a continuance and the clarity of the charging instrument, the errors were not sentencing issues pursuant to G.S. 15A-1444(a2) and defendant did not have an appeal by right or by certiorari for the entry of a plea of "no contest" to habitual driving while impaired and habitual felon status. State v. Moore, 156 N.C. App. 693, 577 S.E.2d 354, 2003 N.C. App. LEXIS 200 (2003).

Blakely Errors Were Harmless. — Blakely errors committed by the trial court in sentencing defendant for DUI were harmless as defendant knowingly created a great risk of death to more than one person by means of a weapon or device that would normally be hazardous to more than one person since: (1) defendant operated defendant's vehicle in a reckless manner by speeding, driving while intoxicated and with THC and morphine in defendant's blood, and weaving in and out of traffic; (2) a reasonable person would have known that a great risk of death had been created; (3) defendant's blood alcohol concentration was 0.10 two hours after the collision; (4) defendant acknowledged that the two involuntary manslaughter convictions showed that in the course of conduct as to each offense defendant killed another; and (5) since there were two involuntary manslaughter convictions, the evidence used to prove an element of one offense could be used to support an aggravating factor of a separate joined offense. State v. Speight, 186 N.C. App. 93, 650 S.E.2d 452, 2007 N.C. App. LEXIS 1983 (2007).

OPINIONS OF ATTORNEY GENERAL

As to applicability of statute to persons operating bicycles with helper motors, see opinion of Attorney General to Mr. Michael v. F. Royster, Assistant District Attorney, Twenty-Sixth Judicial District, 45 N.C.A.G. 286 (1976), issued under former G.S. 20-138, 20-139. 316 N.C. 523, 342 S.E.2d 855 (1986), modified and aff'd.

Driveways of an apartment complex are "public vehicular areas." See opinion of Attorney General to Mr. C.C. Tarleton, 42 N.C.A.G. 107 (1972), issued under former G.S. 20-138, 20-139.

§ 20-138.2. Impaired driving in commercial vehicle.

(a) Offense. — A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

(3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. — The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. — Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. — To charge a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges the defendant drove a commercial motor vehicle on a highway, street, or public vehicular area while subject to an impairing substance.

(d) Implied Consent Offense. — An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(e) Punishment. — The offense in this section is a misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.

(f) Repealed by Session Laws 1991, c. 726, s. 19.

(g) Chemical Analysis Provisions. — The provisions of G.S. 20-139.1 shall apply to the offense of impaired driving in a commercial motor vehicle. (1989, c. 771, s. 12; 1991, c. 726, s. 19; 1993, c. 539, s. 363; 1994, Ex. Sess., c. 24, s. 14(c); 1998-182, s. 24; 2006-253, s. 10.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1112, s. 15 also enacted a G.S. 20-138.2, to be effective June 1, 1989 through June 30, 1989, which was almost identical to the G.S. 20-138.2 enacted by Session Laws 1989, c. 771, s. 12, effective September 1, 1990. Session Laws 1989, c. 771, s. 18, effective June 1, 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, G.S. 20-138.2, as enacted by c. 1112, never went into effect.

CASE NOTES

Legislative Intent. — Our legislature has adopted a breath alcohol per se offense as an alternative method of committing a driving while impaired offense, as it is immaterial whether the defendant is in fact impaired or whether his blood alcohol content is in excess of that permitted in the statutes. State v. Cothran, 120 N.C. App. 633, 463 S.E.2d 423 (1995).

"Commercial Motor Vehicle". — The defendant's contention that he did not violate this section because he was not driving a "commercial motor vehicle" was without merit; the tractor-trailer was a commercial vehicle within the statutory definition although the defendant was driving it for his own private use and although he had detached the trailer portion of the tractor-trailer. State v. Jones, 140 N.C. App. 691, 538 S.E.2d 228, 2000 N.C. App. LEXIS 1257 (2000).

Cited in Harrell v. Bowen, 362 N.C. 142, 655 S.E.2d 350, 2008 N.C. LEXIS 26 (2008).

§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.

(a) Offense. — A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. — An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to its manner and use.

(c) Punishment. — Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. — A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6). (1998-182, s. 23; 1999-406, s. 15; 2000-140, s. 5; 2000-155, s. 16; 2007-182, s. 2; 2008-187, s. 36(a).)

Editor's Note. — Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Effect of Amendments. — Session Laws 2008-187, s. 36(a), effective August 7, 2008, in the last sentence of subsection (b2), substituted "Department of Health and Human Services" for "Commission for Public Health" and substituted "Department" for "Commission."

§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.

(a) Offense. — A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. — An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to its manner and use.

(c) Punishment. — Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. — A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2). (1998-182, s. 27; 1999-406, s. 16; 2000-140, s. 6; 2000-155, s. 17; 2007-182, s. 2; 2008-187, s. 36(b).)

Editor's Note. — Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Effect of Amendments. — Session Laws 2008-187, s. 36(b), effective August 7, 2008, in subsection (b2), substituted "Department of Health and Human Services" for "Commission for Public Health" and substituted "Department" for "Commission."

§ 20-138.2C. Possession of alcoholic beverages while operating a commercial motor vehicle.

A person commits the offense of operating a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d), upon any highway, any street, or any public vehicular area within the State while having an open or closed alcoholic beverage in the passenger area of the commercial motor vehicle. This section shall not apply to the driver of a commercial motor vehicle that is also an excursion passenger vehicle, a for-hire passenger vehicle, a common carrier of passengers, or a motor home, if the alcoholic beverage is in possession of a passenger or is in the passenger area of the vehicle. (1999-330, s. 2.)

§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.

(a) Offense. — It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. — An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(b1) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. — The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

(d) Limited Driving Privilege. — A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.
(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction. (1983, c. 435, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 11; 1993, c. 539, s. 364; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 506, s. 6; 1997-379, ss. 4, 5.2; 2000-140, s. 7; 2000-155, s. 18; 2006-253, s. 11.)

Editor's Note. — Session Laws 2007-493, s. 16, provides: "The Legislative Research Commission may study dispositional alternatives for juveniles who are adjudicated delinquent for an offense that is a violation of G.S. 20-138.1, Impaired Driving, or G.S. 20-138.3, Driving By Persons Less Than 21 Years Old After Consuming Alcohol or Drugs. In conducting its study, the Commission shall consider the offense classifications and dispositions set forth in G.S. 7B-2508 and shall determine whether violations of G.S. 20-138.1 and G.S. 20-138.3 should be classified as violent, serious, or minor. In addition, the Commission shall review the delinquency history level points assigned to the offense classifications pursuant to G.S. 7B-2507 and shall determine the appropriate points to be assigned for violations of G.S. 20-138.1 and G.S. 20-138.3. The Legislative Research Commission may make an interim report, including any legislative proposals, to the 2007 General Assembly, Regular Session 2008, and shall make its final report to the 2009 General Assembly upon its convening."

CASE NOTES

Construction with Other Law. — The defendant's prior alcohol-related conviction pursuant to this section was relevant, because the impaired defendant caused a death and was charged with second-degree murder, and was admissible for the purpose of establishing malice, even though the prior offense imposed strict liability based upon defendant's age without regard to the quantity consumed. State v. Gray, 137 N.C. App. 345, 528 S.E.2d 46, 2000 N.C. App. LEXIS 324 (2000).

Cited in Iodice v. United States, 289 F.3d 270 (4th Cir. 2002); State v. Hinchman, — N.C. App. —, 666 S.E.2d 199, 2008 N.C. App. LEXIS 1667 (2008).

§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case.

(a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or
(2) Accepts a plea of guilty or no contest to a lesser included offense; or
(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not a case subject to the implied-consent law; or
(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in a case subject to the implied-consent law.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

(1) The alcohol concentration or the fact that the driver refused.
(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
(6) The name and agency of the charging officer and whether the officer is available.
(7) Any reason why the charges are dismissed.

(c) **(See Editor's note on effective date)** A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request. (1983, c. 435, s. 25; 1987 (Reg. Sess., 1988), c. 1112; 1989, c. 771, s. 18; 2006-253, s. 19; 2007-493, s. 16.)

Editor's Note. — Session Laws 1987, (Reg. Sess., 1988), c. 1112 would have amended this section effective June 1, 1989, through June 30, 1989, to expand its scope to any case in which a person was charged with impaired driving. Session Laws 1989, c. 771, s. 18 repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112, effective June 1, 1989; therefore, the provisions of c. 1112 never went into effect.

Session Laws 2006-253, s. 33, provides in part: "Sections 20.1, 20.2, and the requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, become effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts." The rewrite of the superior court clerk's system has not happened.

Effect of Amendments. — Session Laws 2006-253, s. 19, effective December 1, 2006, rewrote the section. See Editor's note for applicability.

§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within 10 years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class F felon and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(d) A person convicted under this section shall have his license permanently revoked.

(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

(1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.

(2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest. (1989 (Reg. Sess., 1990), c. 1039, s. 7; 1993, c. 539, s. 1258; 1994, Ex. Sess., c. 14, s. 32; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 34.1; c. 767, s. 32; 1997-379, s. 6; 2006-253, ss. 12, 13.)

Legal Periodicals. — For survey of developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

For comment, "North Carolina's Unconstitutional Expansion of an Ancient Maxim: Using DWI Fatalitites to Satisfy First Degree Felony Murder," see 22 Campbell L. Rev. 169 (1999).

For note, "Ramifications of the 1997 DWI/Felony Prior Record Level Amendment to the Structured Sentencing Act: State of North Carolina v. Tanya Watts Gentry," see 22 Campbell L. Rev. 211 (1999).

Once, Twice, Four Times a Felon: North Carolina's Unconstitutional Recidivist Statutes, see 24 Campbell L. Rev. 115 (2001).

CASE NOTES

Constitutionality. — Statute was not unconstitutional on its face because it was a recidivist statute that punished the most recent offense more severely, not a statute regarding a substantive offense that would be subject to double jeopardy analysis. State v. Vardiman, 146 N.C. App. 381, 552 S.E.2d 697, 2001 N.C. App. LEXIS 936 (2001), appeal dismissed, 355 N.C. 222, 559 S.E.2d 794 (2002), cert. denied, 537 U.S. 833, 123 S. Ct. 142, 154 L. Ed. 2d 51 (2002).

Defendant's argument, that the habitual driving while impaired statute violated the separation of powers and was an unconstitutional delegation of legislative authority to the executive branch because the district attorney was allowed to exercise discretion in enforcing the law, was rejected because defendant had not argued, nor did any evidence reflect an improper motive by the prosecutor regarding the charges upon which defendant was indicted and tried. State v. Johnson, 186 N.C. App. 673, 651 S.E.2d 907, 2007 N.C. App. LEXIS 2305 (2007).

Statute Did Not Violate Double Jeopardy. — Effect of G.S. 20-138.5 was that a defendant was punished more severely for a recent crime based on having committed previous crimes, not that the defendant was punished for those previous crimes again; therefore the statute did not violate the United States and North Carolina Constitutions' prohibitions against double jeopardy. State v. Vardiman, 146 N.C. App. 381, 552 S.E.2d 697, 2001 N.C. App. LEXIS 936 (2001), appeal dismissed, 355 N.C. 222, 559 S.E.2d 794 (2002), cert. denied, 537 U.S. 833, 123 S. Ct. 142, 154 L. Ed. 2d 51 (2002).

Defendant's conviction on a charge of habitual impaired driving did not violate defendant's rights to be free of double jeopardy; recidivist statutes, such as habitual impaired driving, survived constitutional challenges regarding double jeopardy because they increased the severity of the punishment for the crime being prosecuted; they did not punish a previous crime a second time. State v. Bradley, 181 N.C. App. 557, 640 S.E.2d 432, 2007 N.C. App. LEXIS 251 (2007).

Superior Court Jurisdiction. — The offense of habitual impaired driving as defined in this section constitutes a separate substantive felony offense which is properly within the original exclusive jurisdiction of the superior court. State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994).

Section 20-25 creates no right to appeal a revocation under this section since this section appears in Article 3 rather than Article 2. Following a conviction for habitual impaired driving, under this section, permanent revocation is mandatory and the trial court lacks the authority to provide relief. Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512, 2000 N.C. App. LEXIS 496 (2000).

A conviction for habitual impaired driving may serve as the basis for enhancement to habitual felon status. State v. Baldwin, 117 N.C. App. 713, 453 S.E.2d 193 (1995).

Determination of Prior Record Level. — Trial court impermissibly assigned points to defendant's three prior DWI convictions where those same three DWI convictions were the basis for her habitual DWI charge. State v.

Gentry, 135 N.C. App. 107, 519 S.E.2d 68 (1999).

Trial court did not err in calculating defendant's prior record by including his driving while impaired convictions even though those convictions were also elements of his habitual impaired driving convictions; prior convictions of driving while impaired were the elements of the offense of habitual impaired driving, but G.S. 20-138.5(a) did not impose punishment for these previous crimes, it imposed an enhanced punishment for the latest offense, and the trial court's calculation of defendant's prior record level did not represent a double-counting of convictions. State v. Hyden, 175 N.C. App. 576, 625 S.E.2d 125, 2006 N.C. App. LEXIS 179 (2006).

Evidence of Prior Convictions. — The state could use a certified computer printout from the Administrative Office of the Courts to establish a prior conviction during the defendant's prosecution for impaired driving. State v. Ellis, 130 N.C. App. 596, 504 S.E.2d 787 (1998).

Habitual offender charge was supported by a judgment, signed by the presiding judge on the uniform citation form and included in the record on appeal and two other charges which had been consolidated for judgment but which were two separate offenses under this section. State v. Allen, 164 N.C. App. 665, 596 S.E.2d 261, 2004 N.C. App. LEXIS 1018 (2004).

Defendant's conviction of driving while intoxicated under G.S. 20-138.5 was affirmed; all of the requirements of the charge were met, as a disputed prior conviction occurred within the statutory seven year period, and the trial court properly allowed the State to amend the indictment to state the date of the conviction, as time was not of the essence pursuant to G.S. 15-155. State v. Winslow, 169 N.C. App. 137, 609 S.E.2d 463, 2005 N.C. App. LEXIS 533 (2005), review denied, in part, 359 N.C. 642, 617 S.E.2d 660 (2005).

Enhancement of Sentence. — This section did not prohibit defendant's felony sentence from being enhanced on the grounds that he was an habitual felon when elements necessary to prove that he was an habitual felon were the same as those elements which were used to support the underlying felony. State v. Misenheimer, 123 N.C. App. 156, 472 S.E.2d 191 (1996).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); State v. Jernigan, 118 N.C. App. 240, 455 S.E.2d 163 (1995); State v. Smith, 139 N.C. App. 209, 533 S.E.2d 518, 2000 N.C. App. LEXIS 887 (2000); State v. Lobohe, 143 N.C. App. 555, 547 S.E.2d 107, 2001 N.C. App. LEXIS 311 (2001); State v. Gregory, 154 N.C. App. 718, 572 S.E.2d 838, 2002 N.C. App. LEXIS 1534 (2002); State v. Burch, 160 N.C. App. 394, 585 S.E.2d 461, 2003 N.C. App. LEXIS 1799 (2003); State v. Jones, 358 N.C. 473, 598 S.E.2d 125 (2004); State v. Taylor, 165 N.C. App. 750, 600 S.E.2d 483, 2004 N.C. App. LEXIS 1519 (2004); State v. Highsmith, 173 N.C. App. 600, 619 S.E.2d 586, 2005 N.C. App. LEXIS 2123 (2005); State v. Bowden, 177 N.C. App. 718, 630 S.E.2d 208, 2006 N.C. App. LEXIS 1218 (2006); Harrell v. Bowen, 362 N.C. 142, 655 S.E.2d 350, 2008 N.C. LEXIS 26 (2008).

§ 20-138.6: Reserved for future codification purposes.

§ 20-138.7. Transporting an open container of alcoholic beverage.

(a) Offense. — No person shall drive a motor vehicle on a highway or the right-of-way of a highway:

(1) While there is an alcoholic beverage in the passenger area in other than the unopened manufacturer's original container; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. — No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right-of-way of a highway. For purposes of this subsection, only the person who possesses or consumes an alcoholic beverage in violation of this subsection shall be charged with this offense.

(a2) Exception. — It shall not be a violation of subsection (a1) of this section for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.; or

(3) In a house trailer as defined in G.S. 20-4.01(14).

(a3) Meaning of Terms. — Under this section, the term "motor vehicle" means only those types of motor vehicles which North Carolina law requires to be registered, whether the motor vehicle is registered in North Carolina or another jurisdiction.

(b) Subject to Implied-Consent Law. — An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Public Health, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. — Violation of subsection (a) of this section shall be a Class 3 misdemeanor for the first offense and shall be a Class 2 misdemeanor for a second or subsequent offense. Violation of subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section by the driver of the motor vehicle is a lesser-included offense of subsection (a) of this section. A violation of subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. — If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. — In any prosecution for a violation of subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or the right-of-way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right-of-way of a highway, or (ii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right-of-way of a highway.

(h) Limited Driving Privilege. — A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction. (1995, c. 506, s. 9; 2000-155, s. 4; 2002-25, s. 1; 2006-66, s. 21.7; 2007-182, s. 2.)

Editor's Note. — Session Laws 2000-155, s. 21, as amended by Session Laws 2002-25, s. 1, and as amended by Session Laws 2006-66, s. 21.7, provides that the amendment to this section by s. 4 of the act is effective September 1, 2000. The sunset provision was deleted by Session Laws 2006-66, s. 21.7.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 20-139: Repealed by Session Laws 1983, c. 435, s. 23.

§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

(a) Chemical Analysis Admissible. — In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. — The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed.

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. — Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results Preventive Maintenance. — The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and
(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. — The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

(b4) Repealed by Session Laws 2006-253, s. 16, effective December 1, 2006, and applicable to offenses committed on or after that date

(b5) Subsequent Tests Allowed. — A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, the effective dates of the permits, and the records of preventive maintenance. A court or administrative agency shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) Blood and Urine for Chemical Analysis. — Notwithstanding any other provision of law, when a blood or urine test is specified as the type of chemical analysis by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the law enforcement officer's request for the withdrawal of blood or collecting the urine, the officer shall furnish it before blood is withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood or collecting urine, may be held criminally or civilly liable by reason of withdrawing the blood or collecting the urine, except that there is no immunity from liability for negligent acts or omissions. A person requested to withdraw blood or collect urine pursuant to this subsection may refuse to do so only if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected. If the officer requesting the blood or urine requests a written justification for the refusal, the medical provider who determined the sample could not be collected safely shall provide written justification at the time of the refusal.

(c1) Admissibility. — The results of a chemical analysis of blood or urine reported by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. —

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement may be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. — Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.5. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. — If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d1) of this section by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained. A person requested to withdraw blood or collect urine pursuant to this subsection may refuse to do so only if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected. If the officer requesting the blood or urine requests a written justification for the refusal, the medical provider who determined the sample could not be collected safely shall provide written justification at the time of the refusal.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. — A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

(e1) Use of Chemical Analyst's Affidavit in District Court. — An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication and without the testimony of the analyst in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit.

(e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can only use the provisions of subsection (e1) of this section if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the affidavit would be used of its intention to introduce the affidavit into evidence under this subsection and provides a copy of the affidavit to the defendant, and

(2) The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the affidavit would be used that the defendant objects to the introduction of the affidavit into evidence.

The failure to file a timely objection as provided in this subsection shall be deemed a waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence. The case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the affidavit.

(f) Evidence of Refusal Admissible. — If any person charged with an implied-consent offense refuses to submit to a chemical analysis or to perform field sobriety tests at the request of an officer, evidence of that refusal is admissible in any criminal, civil, or administrative action against the person.

(g) Controlled-Drinking Programs. — The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute,

regulation, or ordinance controlling alcohol. (1963, c. 966, s. 2; 1967, c. 123; 1969, c. 1074, s. 2; 1971, c. 619, ss. 12, 13; 1973, c. 476, s. 128; c. 1081, s. 2; c. 1331, s. 3; 1975, c. 405; 1979, 2nd Sess., c. 1089; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 26; 1983 (Reg. Sess., 1984), c. 1101, s. 20; 1989, c. 727, s. 219(2); 1991, c. 689, s. 233.1(b); 1993, c. 285, s. 7; 1997-379, ss. 5.3-5.5; 1997-443, s. 11A.10; 1997-443, s. 11A.123; 1997-456, s. 34(b); 2000-155, s. 8; 2003-95, s. 1; 2003-104, s. 2; 2006-253, s. 16; 2007-115, ss. 5, 6; 2007-493, ss. 3, 18, 22, 23; 2009-473, ss. 3-6.)

Cross References. — For provision regarding the offense of impaired driving, see G.S. 20-138.1.

Editor's Note. — Session Laws 2009-473, s. 8, provides in part: "Nothing in this act shall be construed to abrogate any judicial or administrative rulings or decisions prior to the effective date of this act that (i) allowed or disallowed the introduction of evidence or (ii) validated or invalidated procedures used for the introduction of evidence."

Effect of Amendments. — Session Laws 2008-473, ss. 3-6, effective October 1, 2009, and applicable to offenses committed on or after that date, in subsection (c1), inserted "reported" and "and without the testimony of the analyst" in the first sentence, rewrote the third sentence, which read: "However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court that the defendant objects to the introduction of the report into evidence," added subdivisions (c1)(1) and (c1)(2), and added the first sentence and "Upon filing a timely objection" to the beginning of the second paragraph; rewrote subdivision (c3)(3), adding subdivisions (c3)(3)a and (c3)(3)b, and the last paragraph; in subsection (e1), inserted "and without the testimony of the analyst" in the introductory language and rewrote the last paragraph; and added subsection (e2).

Legal Periodicals. — For article on tests for intoxication, see 45 N.C.L. Rev. 34 (1966).

For survey of 1978 law on criminal procedure, see 57 N.C.L. Rev. 1007 (1979).

For note discussing North Carolina's Validation of the Warrantless Seizure of Blood from an Unconscious Suspect, in Light of State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985), see 21 Wake Forest L. Rev. 1071 (1986).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2315 (1997).

For 1997 legislative survey, see 20 Campbell L. Rev. 417.

CASE NOTES

I. In General.
II. Administration and Use of Breathalyzer Test.
III. Limitation on Role of Arresting Officer.
IV. Assisting Defendant in Securing Additional Test.
V. Administration and Use of Blood Test.

I. IN GENERAL.

Editor's Note. — *Many of the cases cited below were decided prior to 1969 and subsequent amendments, and prior to the 1993 reduction of the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08, and prior to the 2000 amendment of this section, which deleted the word "willful" preceding "refusal" in subsection (b3).*

Constitutionality. — See State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221, cert. denied and appeal dismissed, 309 N.C. 323, 307 S.E.2d 171 (1983).

Subdivision (b2) does not provide an unconstitutional shifting of the burden of proof to defendant. The possibility that the breathalyzer may not have been properly maintained is a affirmative defense to be established by defendant and the State may permissibly put the burden of establishing affirmative defenses on the defendant. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

The requirement of subdivision (b)(3) of this section that defendants charged with impaired driving be given two breathalyzer tests after January 1, 1985, does not create an impermissible classification denying defendant equal protection of the laws. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

All individuals arrested for driving while impaired who are tested under model 900 breathalyzer are given same initial test to determine blood alcohol content. Regulations merely treat same group of people in a different way depending on results of first test. This classification is not of the type that can be considered denial of equal protection. State v. Garvick, 98 N.C. App. 556, 392 S.E.2d 115 (1990).

This section does not violate the Law of the Land Clause of Art. I, § 19 of the North Carolina Constitution. State v. Jones, 106 N.C. App. 214, 415 S.E.2d 774 (1992).

Because testing pursuant to a search warrant is a type of "other competent evidence" referred to in this statute, the State is not limited to evidence of blood alcohol concentration which was procured in accordance with the procedures of G.S. 20-16.2. State v. Davis, 142 N.C. App. 81, 542 S.E.2d 236, 2001 N.C. App. LEXIS 45 (2001), cert. denied, 353 N.C. 386, 547 S.E.2d 818 (2001).

Willful Refusal Not Required. — Defendant's argument that because "willful refusal" is required before a driver's license is revoked under G.S. 20-16.2, the requirement of a willful refusal should be read into this section was without merit. State v. Pyatt, 125 N.C. App. 147, 479 S.E.2d 218 (1997).

Subsection (f) does not require a willful refusal before evidence of a refusal is admissible and the court will not read in this additional requirement. State v. Pyatt, 125 N.C. App. 147, 479 S.E.2d 218 (1997).

State's failure to take and to preserve an additional breath sample for independent testing by defendant or to produce the control and test ampules for defendant's breathalyzer examination did not violate state or federal due process. State v. Jones, 106 N.C. App. 214, 415 S.E.2d 774 (1992).

Meaning of "Readings" in Subdivision (b3)(3). — When read in pari materia with statute's remaining provisions, term "readings" was intended by legislature to mean test "results" recorded by chemical analyst in hundredths, rounded down as provided in the commission regulations. State v. Tew, 326 N.C. 732, 392 S.E.2d 603 (1990).

Subdivision (b3) does not create an impermissible classification and the Safe Roads Act (G.S. 20-138.1 et seq.) does not deny the equal protection of the laws. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Subsection (e1) is constitutional under the provisions of U.S. Const., Amend. VI and N.C. Const., Art. I, § 19 and 23. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Subsection (e1) of this section does not violate the accused's right to confrontation. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

This section relates only to criminal actions arising out of the operation of a motor vehicle and has no application to the effect of voluntary intoxication upon criminal responsibility for assault and homicide. State v. Bunn, 283 N.C. 444, 196 S.E.2d 777 (1973).

The chemical analysis (breathalyzer) test authorized by this section is, by its express terms, applicable only to criminal actions arising out of the operation of a motor vehicle and has no application to criminal responsibility for homicide. State v. Medley, 295 N.C. 75, 243 S.E.2d 374 (1978).

Breathalyzer test results are not admissible in a breaking and entering case. State v. Wade, 14 N.C. App. 414, 188 S.E.2d 714, cert. denied, 281 N.C. 627, 190 S.E.2d 470 (1972).

Admission of Test Results Held Error Where Defendant Had Not Been Driving Vehicle. — Where defendant was not driving or operating a vehicle at the time of alleged assault on a police officer, the court erred in admitting testimony showing the result of a breathalyzer test. State v. Powell, 18 N.C. App. 732, 198 S.E.2d 70, cert. denied, 283 N.C. 757, 198 S.E.2d 727 (1973).

As to the prospective effect of the second 1973 amendment, see State v. Bunton, 27 N.C. App. 704, 220 S.E.2d 354 (1975).

Admission of Evidence of Refusal to Submit to Test Does Not Violate Right Against Self-Incrimination. — Admission of evidence of defendant's refusal to submit to the tests under this section does not violate his constitutional right against self-incrimination. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

Miranda Requirements Inapplicable to Breathalyzer Test. — Since the taking of a breath sample from an accused for the purpose of the test is not evidence of a testimonial or communicative nature within the privilege against self-incrimination, the requirements of Miranda v. Arizona, 394 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966) are inapplicable to a breathalyzer test administered pursuant to this section. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

The breathalyzer operator is not required to remind the subject of his Miranda rights, since the test does not constitute evidence of a testimonial nature. State v. Spencer, 46 N.C. App. 507, 265 S.E.2d 451 (1980).

As breathalyzer results are not testimonial evidence, Miranda warnings are not required prior to administering a breathalyzer. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, 319 N.C. 227, 353 S.E.2d 404 (1987).

Defendant's Allegedly Incriminating Statements Held Harmless. — Admission of evidence that after defendant blew into breathalyzer and was shown the reading, he made statements indicating his disbelief at the result, thus allegedly creating an inference that he had registered a reading in excess of the legal limit on the first test, was harmless in light of other evidence of defendant's guilt, including his refusal to take a second test. State v. Wike, 85 N.C. App. 516, 355 S.E.2d 221 (1987).

"Chemical analyst" for purposes of this section includes a person who was validly licensed by the Department of Human Resources to perform chemical analyses immediately prior to the enactment of the Safe Roads Act. To hold otherwise would mean that an individual licensed to perform chemical analyses under one statute would automatically lose his license when the testing procedures are merely recodified in another statute. Obviously the legislature did not intend that result. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Although subsection (e) requires that the chemical analyst record the results of the test and the time of collection and give a copy to the person submitting to the test, the court found there to be compliance where the defendant was given the required information on the test card printed by the machine after the test was performed. State v. Watson, 122 N.C. App. 596, 472 S.E.2d 28 (1996).

The use of a chemical analyst's affidavit, in lieu of the analyst's live appearance, by the State in a criminal trial in the district court division of the general court of justice as proof of the facts noted in the chemical analyst's affidavit, does not deny to the criminal defendant any right or privilege granted by the Constitution of the United States or the Constitution of North Carolina. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The legislature, through subsection (e1) of this section, has enacted a constitutionally permissible procedure attuned to scientific and technological advancements which have insured reliability in chemical testing for blood-alcohol concentration. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Officer's Testimony on Qualified Person Sufficient. — Trooper's testimony that the person drawing defendant's blood worked at the blood laboratory at the hospital was sufficient to show that the person was a qualified person under G.S. 20-139.1(c). State v. Hinchman, — N.C. App. —, 666 S.E.2d 199, 2008 N.C. App. LEXIS 1667 (2008).

Collateral Estoppel. — For purposes of the privity requirement for a collateral estoppel defense, the Attorney General, when representing the Department of Motor Vehicles in a license revocation appeal, and the district attorney, when representing the State in a criminal DWI proceeding, represent the same interest, that of state citizens prohibiting individuals who use intoxicating substances from using their roads. State v. Summers, 132 N.C. App. 636, 513 S.E.2d 575, 1999 N.C. App. LEXIS 275 (1999), aff'd, 351 N.C. 620, 528 S.E.2d 17 (2000).

The State was collaterally estopped in a DWI prosecution from submitting evidence of the defendant's refusal to take an intoxilyzer test, where the issue of refusal was litigated and decided in the defendant's favor in a prior civil license revocation proceeding, and the State did not appeal. State v. Summers, 132 N.C. App. 636, 513 S.E.2d 575, 1999 N.C. App. LEXIS 275 (1999), aff'd, 351 N.C. 620, 528 S.E.2d 17 (2000).

Subsection (e1) has effectively created a statutory exception to the hearsay rule. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The statutory exception to the hearsay rule created by subsection (e1) of this section has as its basis the sound reasoning which gave rise to the business and public records exceptions to the hearsay rule. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Subsection (e1) reflects a rationale which complies fully with historically recognized legitimate reasons for exceptions to the general rule against hearsay evidence. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The scientific and technological advancements in breath analysis for alcohol concentration have removed the necessity for a subjective determination of impairment, so appropriate for cross-examination, and have increasingly removed the operator as a material element in the objective determination of blood-alcohol concentration. Indeed, the legislature's recognition of the reliable and accurate innovation of blood-alcohol concentration testing is manifested in G.S. 20-138.1(a)(2) which now provides that a person who after having consumed sufficient alcohol that he has, at any relevant time after driving, an alcohol concentration of 0.10 (now 0.08) or more commits the offense of impaired driving. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The science of breath analysis for alcohol concentration has become increasingly reliable, increasingly less dependent on human skill of operation, and increasingly accepted as a means for measuring blood-alcohol concentration. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Where defendant by his voluntary and overt actions makes it clear that he will not voluntarily submit to breathalyzer test, it is not necessary for the State to present evidence that the defendant was advised of his right to refuse to take the breathalyzer test before evidence of that refusal may be used against him at a trial for driving under the influence, as is allowed pursuant to this section. State v. Simmons, 51 N.C. App. 440, 276 S.E.2d 765 (1981).

This section contemplates situations in which more than two samples may be required to constitute a valid chemical analysis. Watson v. Hiatt, 78 N.C. App. 609, 337 S.E.2d 871 (1985).

Refusal to Give More Than Two Samples. — Where petitioner provided two breath samples resulting in readings of .28 and .31 and then refused to provide any more samples, her conduct amounted to a willful refusal under G.S. 20-16.2(c), within the meaning of subsection (b3) of this section. Watson v. Hiatt, 78 N.C. App. 609, 337 S.E.2d 871 (1985).

Sufficient evidence existed to conclude that petitioner refused to give sequential breath samples and that petitioner's conduct constituted a willful refusal under this section, and defendant's contention that the test was not performed according to applicable rules and regulations was irrelevant to the revocation proceedings. Gibson v. Faulkner, 132 N.C. App. 728, 515 S.E.2d 452 (1999), decided prior to the 2000 amendment.

Refusal to Remove Object from Mouth. — Where breathalyzer operator noticed a piece of paper in the corner of petitioner's mouth and ordered him to remove it, and where petitioner refused, petitioner's refusal to obey the breathalyzer operator's instructions was a refusal to take the breathalyzer test under G.S. 20-16.2(c), since a reasonable method for determining that the subject has not "eaten" in 15 minutes is to prohibit him from placing foreign objects in his mouth. Tolbert v. Hiatt, 95 N.C. App. 380, 382 S.E.2d 453 (1989).

Chain of Custody of Evidence. — If all the evidence can reasonably support a conclusion that the blood sample analyzed is the same as that taken from the defendant then it is admissible into evidence. The fact that the defendant can show potential weak spots in the chain of custody only relates to the weight to be given the evidence establishing the chain of custody. State v. Bailey, 76 N.C. App. 610, 334 S.E.2d 266 (1985), overruled on other grounds, State v. Drdak, 330 N.C. 587, 411 S.E.2d 604 (1992).

Applied in State v. Powell, 264 N.C. 73, 140 S.E.2d 705 (1965); State v. Randolph, 273 N.C. 120, 159 S.E.2d 324 (1968); State v. Mobley, 273 N.C. 471, 160 S.E.2d 334 (1968); State v. Sherrill, 15 N.C. App. 590, 190 S.E.2d 405 (1972); State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974); State v. Hurley, 28 N.C. App. 478, 221 S.E.2d 743 (1976); Byrd v. Wilkins, 69 N.C. App. 516, 317 S.E.2d 108 (1984); State v. Watts, 72 N.C. App. 661, 325 S.E.2d 505 (1985); State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993); State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993); State v. Summers, 351 N.C. 620, 528 S.E.2d 17, 2000 N.C. LEXIS 351 (2000); State v. McDonald, 151 N.C. App. 236, 565 S.E.2d 273, 2002 N.C. App. LEXIS 725 (2002); State v. Narron, — N.C. App. —, 666 S.E.2d 860, 2008 N.C. App. LEXIS 1758 (2008).

Cited in State v. Brown, 13 N.C. App. 327, 185 S.E.2d 453 (1971); Gwaltney v. Keaton, 29 N.C. App. 91, 223 S.E.2d 506 (1976); State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976); In re Arthur, 291 N.C. 640, 231 S.E.2d 614 (1977); State v. Lockamy, 65 N.C. App. 75, 308 S.E.2d 750 (1983); In re Redwine, 312 N.C. 482, 322 S.E.2d 769 (1984); State v. Knoll, 84 N.C. App. 228, 352 S.E.2d 463 (1987); In re Rogers, 94 N.C. App. 505, 380 S.E.2d 599 (1989); State v. Freund, 326 N.C. 795, 392 S.E.2d 608 (1990); Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994); State v. Abdereazeq, 122 N.C. App. 727, 471 S.E.2d 445 (1996); Powers v. Powers, 130 N.C. App. 37, 502 S.E.2d 398 (1998).

II. ADMINISTRATION AND USE OF BREATHALYZER TEST.

The breathalyzer test is a chemical test for the testing of a person's breath for the purpose of determining the alcoholic content of his blood. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970), rev'd on other grounds, 277 N.C. 547, 178 S.E.2d 462 (1971).

Procedure for Requesting Chemical Tests Not Different from § 20-16.2. — The General Assembly did not intend to establish a different procedure for requesting chemical tests under this section than it provided in G.S. 20-16.2. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

One Request by Officer Sufficient. — Petitioner's contention that he did not willfully refuse to submit to a chemical analysis at the request of the charging officer since the officer did not request any additional chemical analysis after the first test was completed was without merit, as the statutes require the charging officer to request a chemical analysis based on sequential breath samples, not a sequence of requests for separate chemical analyses, and thus officer's original request that petitioner submit to a chemical analysis was sufficient to comply with the requirements of G.S. 20-16.2(c). Tolbert v. Hiatt, 95 N.C. App. 380, 382 S.E.2d 453 (1989).

The result of a breathalyzer analysis is crucial to a conviction. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Test Must Have Been Timely Made. — For the test to cast any light on a defendant's condition at the time of the alleged crime, the test must have been timely made. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Police Officer's Instructions. — A police officer was not required to repeat all the steps in the breath alcohol test process, but only the step requiring the subject to blow into the instrument, before administering the third test to the defendant, which was required because the results of the first two tests differed by more than .02. State v. Moore, 132 N.C. App. 802, 513 S.E.2d 346 (1999).

In the Interest of Accuracy. — Since it is the degree of intoxication at the time of the occurrence in question which is relevant, the sooner after the event the breathalyzer test is made, the more accurate will be the estimate of blood alcohol concentration at the time of the act in issue. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Time of Test Goes to Weight of Evidence. — The fact that three hours had passed from the time the defendant operated a vehicle until breathalyzer test was given went to the weight to be given the evidence, rather than its admissibility, and the breathalyzer evidence was properly admitted. State v. George, 77 N.C. App. 470, 336 S.E.2d 93 (1985), appeal dismissed and petition denied, 316 N.C. 197, 341 S.E.2d 581 (1986).

This section requires two things before a chemical analysis of a person's breath or blood can be considered valid. First, that such analysis shall be performed according to methods approved by the State Board of Health (now by the Commission for Public Health), and second, that such analysis be made by a person possessing a valid permit issued by the State Board of Health (now by the Department of Human Resources) for this purpose. State v. Powell, 279 N.C. 608, 184 S.E.2d 243 (1971); State v. Chavis, 15 N.C. App. 566, 190 S.E.2d 374 (1972); State v. Eubanks, 283 N.C. 556, 196 S.E.2d 706; State v. Franks, 87 N.C. App. 265, 360 S.E.2d 473 (1987).

The State must establish under subsection (b) of this section (1) that the person administering the test possessed "a valid permit issued by the Department of Human Resources for this purpose" and (2) that the test was "performed according to methods approved by the Commission for Health Services." State v. Martin, 46 N.C. App. 514, 265 S.E.2d 456, cert. denied, 301 N.C. 102 (1980); State v. George, 77 N.C. App. 470, 336 S.E.2d 93 (1985), appeal dismissed and petition denied, 316 N.C. 197, 341 S.E.2d 581 (1986).

It was necessary for a state trooper conducting a chemical analysis test against a drunk driver to hold a permit issued by the Department of Health and Human Services; proper foundation had to be established that the trooper had a permit in order for the test results to be admitted into evidence. State v. Roach, 145 N.C. App. 159, 548 S.E.2d 841, 2001 N.C. App. LEXIS 581 (2001).

Expression of Test Results in Terms of Breath or Blood. — Police officer who was issued a permit to perform chemical analysis under the authority of subsection (b) of this section by the Department of Human Resources was permitted by G.S. 20-4.01(0.2) (now 20-4.01(1b)) to express alcohol concentration in terms of 210 liters of breath, as well as 100 milliliters of blood. State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985).

Regulations Governing Second and Subsequent Samples. — Commission of Health Services [now the Commission for Public Health] operational procedure designating a specific time, namely, at the reappearance of the words "blow sample" on the machine for the collection of the second breath sample, met the requirements of this section that Commission regulations provide time requirements as to the collection of second and subsequent samples. State v. Lockwood, 78 N.C. App. 205, 336 S.E.2d 678 (1985).

Higher of Two Analyses May Not Be Introduced. — Subdivision (b3)(3) of this section restricts the State from seeking to introduce into evidence the higher of two chemical analyses as proof of a defendant's alcohol concentration. State v. Harper, 82 N.C. App. 398, 346 S.E.2d 223 (1986).

Testimony as to Identical Sequential Tests Not Prejudicial. — While subdivision (b3)(3) of this section protects a defendant from a conviction based on the higher of two breathalyzer test results, it was not prejudicial for the court to allow testimony that two breathalyzer tests were administered to defendant, where both breathalyzer test results were 0.12, and where defendant did not object or move to strike prior testimony that a sequential breathalyzer test was administered to him. State v. Harper, 82 N.C. App. 398, 346 S.E.2d 223 (1986).

Consecutively Administered Tests Requirement Met. — Where the time of the first reading was 11:15 a.m., and the time of the second reading was 11:26 a.m., and because these readings were taken from "consecutively administered tests" on adequate breath samples given within 11 minutes of one another and the readings were within .01 of one another, the requirement of sequential testing was complied with, despite the fact that between the time of these two readings defendant had given two insufficient breath samples. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, 319 N.C. 227, 353 S.E.2d 404, appeal dismissed, 319 N.C. 409, 354 S.E.2d 887 (1987).

Qualifications Required to Administer Breathalyzer Test. — A person holding a valid permit issued by the State Board of Health (now by the Department of Human Resources) is qualified to administer a breathalyzer test. When such permit is introduced in evidence, the permittee is competent to testify as to the results of the test. State v. King, 6 N.C. App. 702, 171 S.E.2d 33 (1969); State v. Powell, 10 N.C. App. 726, 179 S.E.2d 785, aff'd, 279 N.C. 608, 184 S.E.2d 243 (1971).

Timeliness of Sequential Breath Tests Under Subdivision (b3)(1) of This Section. — Use of words "as soon as feasible" in duplicate sequential breath samples regulations, in substance meets time requirements of subdivision (b3)(1) of this section. State v. Garvick, 98 N.C. App. 556, 392 S.E.2d 115 (1990).

Purpose of sequential testing is to insure accuracy of readings. "Sequential tests are required to minimize the time between tests." Sequential testing is also designed to assure that factors outside control of both State and defendant do not affect result. Shutting down instrument, adding new ampul, and restarting from beginning would not accomplish either purpose. State v. Garvick, 98 N.C. App. 556, 392 S.E.2d 115 (1990).

Subsection (b3) of this section does not require two chemical analyses but merely requires testing of at least duplicate sequential breath samples. State v. Garvick, 98 N.C. App. 556, 392 S.E.2d 115 (1990).

How Mandate of Subsection (b) as to Qualifications of Person Administering Test Can Be Met. — The mandate of subsection (b) of this section can be met in one of three ways: (1) by stipulation between the defendant and the State that the individual who administers the test holds a valid permit issued by the Department of Human Resources; or (2) by offering the permit of the individual who administers the test into evidence and in the event of conviction from which an appeal is taken, by bringing forward the exhibit as a part of the record on appeal; or (3) by presenting any other evidence which shows that the individual who administered the test holds a valid permit issued by the Department of Human Resources. State v. Mullis, 38 N.C. App. 40, 247 S.E.2d 265 (1978).

Notification of Rights. — Though G.S. 20-16.2 must be read in conjunction with this section to determine the procedures governing the administering of chemical analyses, G.S. 20-16.2, and that statute alone, sets forth the procedures governing notification of rights pursuant to a chemical analysis. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542 (1994).

The burden of proving compliance with subsection (b) lies with the State and the failure to offer any proof is not sanctioned by the courts. State v. Gray, 28 N.C. App. 506, 221 S.E.2d 765 (1976).

In Any Proper Manner. — It is left open for the State to prove compliance with the requirements of this section in any proper and acceptable manner. State v. Powell, 10 N.C. App. 726, 179 S.E.2d 785, aff'd, 279 N.C. 608, 184 S.E.2d 243 (1971); State v. Chavis, 15 N.C. App. 566, 190 S.E.2d 374 (1972); State v. Warf, 16 N.C. App. 431, 192 S.E.2d 37 (1972); State v. Eubanks, 283 N.C. 556, 196 S.E.2d 706 (1973).

Failure to Show Compliance with Subsection (b) as Prejudicial Error. — Failure of the State to produce evidence of the test operator's compliance with subsection (b) of this section must be deemed prejudicial error. State v. Gray, 28 N.C. App. 506, 221 S.E.2d 765 (1976).

State's failure to lay the proper foundation for the admission of evidence of the results of a breathalyzer test entitles defendant to a new trial. State v. Gray, 28 N.C. App. 506, 221 S.E.2d 765 (1976).

Defendant was entitled to a new trial in a prosecution under former G.S. 20-138 where the trial court allowed into evidence the results of a breathalyzer test without a showing by the State that the test was administered according to methods approved by the State Board of Health (now by the Commission for Public Health) and that the test was administered by a person possessing a valid permit issued by the Board of Health (now by the Department of Human Resources). State v. Warf, 16 N.C. App. 431, 192 S.E.2d 37 (1972).

Withdrawal of Blood by Nurse. — Where officers testified that a nurse was present to withdraw petitioner's blood, and one officer further testified that the nurse was "authorized to do that," and there was no evidence to the contrary, the State carried its burden of proof to show compliance with this section. Richardson v. Hiatt, 95 N.C. App. 196, 381 S.E.2d 866, rehearing granted, 95 N.C. App. 780, 384 S.E.2d 62 (1989).

Neither Operator's Permit Nor Copy of Approved Methods Must Be Introduced. — Although permissible, it is not required that either the permit or a certified copy of the methods approved by the State Board of Health (now by the Commission for Public Health) be introduced into evidence by the State before testimony of the results of the breathalyzer test can be given. State v. Powell, 10 N.C. App. 726, 179 S.E.2d 785, aff'd, 279 N.C. 608, 184 S.E.2d 243 (1971).

And Failure to Introduce Copy of Rules Does Not Make Officer's Testimony Incompetent. — Failure to introduce in evidence a certified copy of the rules and regulations containing the approved methods of administering a breathalyzer test does not make an officer's testimony as to the results of a test incompetent. State v. Powell, 279 N.C. 608, 184 S.E.2d 243 (1971).

A witness may testify that he administered the test in accordance with the rules and regulations established, without introducing a copy of such rules and regulations in evidence. State v. Powell, 10 N.C. App. 726, 179 S.E.2d 785, aff'd, 279 N.C. 608, 184 S.E.2d 243 (1971).

Witness testimony as to the customary procedures followed in administering tests using the Breathalyzer model 900 machine was sufficient, and properly admitted under G.S. 8C-1, Rule 406, to prove defendant's test was administered in accordance with "approved methods" required by this section, where copies of the actual test and the arresting officer's personal notes concerning the case had been discarded as customary after approximately five years. State v. Tappe, 139 N.C. App. 33, 533

S.E.2d 262, 2000 N.C. App. LEXIS 801 (2000).

Statement by State trooper who administered breathalyzer test to defendant that he held a particular certificate number from the Department of Human Resources stating that he was qualified as a breathalyzer operator provided the basis for a reasonable inference that he possessed a valid permit at the time he administered the test to defendant, although it was not established when the permit was issued. State v. Doggett, 41 N.C. App. 304, 254 S.E.2d 793 (1979).

Witness' Possession of Permit Not Shown. — The testimony of a witness that he had been to school, studied and graduated from the "school for breathalyzer operators put on by the Community College in Raleigh" was not sufficient to satisfy the requirements of the statute that he possess a valid permit issued by the State Board of Health (now by the Department of Human Resources). State v. Caviness, 7 N.C. App. 541, 173 S.E.2d 12 (1970).

Testimony that a witness had "a license to administer the breathalyzer" was not sufficient to satisfy the requirement of this section that to be considered valid the analysis must be performed by an individual possessing a valid permit issued by the State Board of Health (now by the Department of Human Resources) for this purpose. State v. Caviness, 7 N.C. App. 541, 173 S.E.2d 12 (1970).

The State need not offer proof of "preventive maintenance procedures." State v. Martin, 46 N.C. App. 514, 265 S.E.2d 456, cert. denied, 301 N.C. 102 (1980).

When Result of Breathalyzer Test Is Competent Evidence. — The result of a breathalyzer test, when the qualifications of the person making the test and the manner of making it meet the requirements of this section, is competent evidence in a criminal prosecution under G.S. 20-138 (now G.S. 20-138.1). State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967); State v. Coley, 17 N.C. App. 443, 194 S.E.2d 372, cert. denied, 283 N.C. 258, 195 S.E.2d 690 (1973). See also, State v. Cummings, 267 N.C. 300, 148 S.E.2d 97 (1966).

Variance in Test Results. — Where first of two tests of defendant's breath showed an alcohol concentration between .22 and .23 grams of alcohol per 210 liters of breath, and second showed a concentration of .20 grams, evidence obtained from breathalyzer readings should not be suppressed where rounded-down readings are within .02 of each other. "Readings" was intended by the Legislature to mean the test "results" recorded by the chemical analyst in hundredths, rounded down as provided in the commission regulations. State v. Tew, 326 N.C. 732, 392 S.E.2d 603 (1990).

Evidence was sufficient to lay foundation for introduction of "result" of breathalyzer analysis, the result being that defendant refused to submit to such analysis, where sheriff, who administered breathalyzer test to defendant, testified that he was licensed to operate breathalyzer by North Carolina Department of Health and Human Services, that breathalyzer instrument was in working order on the date in question, and that after giving defendant third opportunity to provide breath sample, officer concluded that defendant willfully refused to take breathalyzer. State v. Barber, 93 N.C. App. 42, 376 S.E.2d 497 (1989).

Assuming arguendo that prosecutor's question regarding lower of two breathalyzer test results was improper, the trial court promptly took appropriate corrective measures by sustaining defendant's objection as to the form of the question and instructing the jury to disregard it; such measures were sufficient to cure any possible prejudice resulting from the prosecutor's question. State v. McDonald, 97 N.C. App. 322, 387 S.E.2d 666 (1990).

Result of Breathalyzer Held Not Competent Evidence. — Where the only evidence was that the officer who administered the breathalyzer test to defendant had a "certificate" to operate the breathalyzer instrument and there was no evidence to show who issued such "certificate," it was error to admit the officer's testimony concerning the results of the test, entitling the defendant to a new trial. State v. Franks, 87 N.C. App. 265, 360 S.E.2d 473 (1987).

State is not required to produce an expert witness to testify concerning a breathalyzer test; admissibility of such testimony is governed by the rules set forth in State v. Powell, 279 N.C. 608, 184 S.E.2d 243 (1971); State v. Luckey, 54 N.C. App. 178, 282 S.E.2d 490 (1981).

Breathalyzer Test May Carry State's Case to Jury. — A breathalyzer test which is otherwise relevant and competent and which shows 0.10 (now 0.08) percent or more by weight of alcohol in defendant's blood will carry the State's case to the jury for its determination of whether defendant was under the influence of alcoholic beverages at the time charged. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

But Jury Is Still at Liberty to Acquit. — Despite the results of the breathalyzer test, the jury is still at liberty to acquit defendant if they find that his guilt is not proven beyond a reasonable doubt, and the court should explain this to the jury. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

The jury is at liberty to acquit defendant if it should find that his guilt was not proven beyond a reasonable doubt. State v. Royall, 14 N.C. App. 214, 188 S.E.2d 50, cert. denied, 281 N.C. 515, 189 S.E.2d 35 (1972).

III. LIMITATION ON ROLE OF ARRESTING OFFICER.

Arresting Officer Cannot Administer Test. — An officer cannot administer the breathalyzer test if he was at the scene of the crime and participated in the arrest. State v. Spencer, 46 N.C. App. 507, 265 S.E.2d 451 (1980).

Chemical analysis test was not valid because it was performed by the arresting officer; admission of such evidence was error. State v. Roach, 145 N.C. App. 159, 548 S.E.2d 841, 2001 N.C. App. LEXIS 581 (2001).

Reason for Limitation as to Who May Administer Test. — The principle that underlies the limitation seems to be that, in the interest of fairness as well as the appearance of fairness, an officer whose judgment in selecting a defendant for arrest or in making the arrest may be at issue at trial should not administer the chemical test that will either confirm or refute the soundness of his earlier judgment in causing the arrest. State v. Jordan, 35 N.C. App. 652, 242 S.E.2d 192 (1978).

The purpose of the limitation is to assure that the test will be fairly and impartially made. State v. Stauffer, 266 N.C. 358, 145 S.E.2d 917 (1966); State v. Jordan, 35 N.C. App. 652, 242 S.E.2d 192 (1978).

Officer who was present at the scene of the arrest for the purpose of assisting if necessary was an "arresting officer" within the meaning of this section, even though a different officer actually placed his hand upon the defendant and informed him that he was under arrest. State v. Stauffer, 266 N.C. 358, 145 S.E.2d 917 (1966).

Policeman Held Not an "Arresting Officer". — Where defendant was already under arrest and was seated in the patrol car of the arresting officer when the officer who administered the test first arrived on the scene, which latter officer had not been called to the scene for any purpose of assisting in the arrest, but arrived at the scene merely because it happened to be on his direct route to the police station, and stopped there solely to assist in moving defendant's car out of the way of traffic, despite the fact that such officer testified on cross-examination by defendant's counsel that if trouble had developed with defendant he would have assisted the arresting officer with that too, these facts did not make him an arresting officer. State v. Dail, 25 N.C. App. 552, 214 S.E.2d 219, cert. denied, 288 N.C. 245, 217 S.E.2d 669 (1975).

Officer Who Previously Arrested Defendant on Similar Charge May Administer Test. — Where an officer had nothing to do with defendant's second arrest, his arrest of defendant on a similar charge earlier in the morning did not bring him within the disqualification. State v. Jordan, 35 N.C. App. 652, 242 S.E.2d 192 (1978).

This section is not violated when the request comes from the arresting officer. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

The arresting officer is qualified to testify as to defendant's refusal to submit to tests. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976); State v. Simmons, 51 N.C. App. 440, 276 S.E.2d 765 (1981).

IV. ASSISTING DEFENDANT IN SECURING ADDITIONAL TEST.

All that this section requires of the arresting officer is that he assist defendant in contacting doctor; he is not required in addition to transport defendant to the doctor. State v. Bunton, 27 N.C. App. 704, 220 S.E.2d 354 (1975); State v. Bumgarner, 97 N.C. App. 567, 389 S.E.2d 425 (1990), disc. rev. denied and appeal dismissed, 326 N.C. 599, 393 S.E.2d 873 (1990).

Law enforcement officers may not hinder a driver from obtaining an independent sobriety test, but their constitutional duties in North Carolina go no further than allowing a defendant access to a telephone and allowing medical personnel access to a driver held in custody. State v. Bumgarner, 97 N.C. App. 567, 389 S.E.2d 425 (1990), disc. rev. denied and appeal dismissed, 326 N.C. 599, 393 S.E.2d 873 (1990).

Refusal of arresting officer to sign forms, authorizing that blood sample be sent from hospital that did not perform certain type of analysis to hospital that did, was not a violation of defendant's rights under subsection (d) of this section so as to render prior breathalyzer results inadmissible, since the officer complied with the mandate of this section by taking defendant to a physician of his choice for the prior test and it was defendant's responsibility to obtain an analysis of the blood sample. State v. Sawyer, 26 N.C. App. 728, 217 S.E.2d 116, cert. denied, 288 N.C. 395, 218 S.E.2d 469 (1975).

No Wrongful Violation of Defendant's Rights Found. — The trial court acted within its discretion in rejecting the defendant's allegation that he had requested and been denied a blood test, where the defendant was given an opportunity to use the telephone to make certain calls to his girlfriend and attorney and could have called, but did not call, a medical expert or hospital for the purposes of conducting a blood test. State v. Tappe, 139 N.C. App. 33, 533 S.E.2d 262, 2000 N.C. App. LEXIS 801 (2000).

V. ADMINISTRATION AND USE OF BLOOD TEST.

This section does not limit the introduction of other competent evidence as to a defendant's alcohol concentration, including other chemical tests. This statute allows other competent evidence of a defendant's blood alcohol level in addition to that obtained from chemical analysis pursuant to this section and G.S. 20-16.2. State v. Drdak, 330 N.C. 587, 411 S.E.2d 604 (1992).

Admissibility of Results When Test Not Properly Performed. — Testimony concerning the results of blood tests may be admitted into evidence even though the tests were not performed in accordance with G.S. 20-16.2 and this section under the "other competent evidence" exception contained in this section. State v. Byers, 105 N.C. App. 377, 413 S.E.2d 586 (1992).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— Many of the opinions of the Attorney General cited below were decided prior to the 1969 and subsequent amendments.*

As to persons qualified to give blood tests, see opinion of Attorney General to Dr. Jacob Koomen, State Health Director, 40 N.C.A.G. 429 (1970).

An Arresting Officer May Not Collect a Breath Sample for Subsequent Analysis by Qualified Operation of a Testing Device. — See opinion of Attorney General to Mr. Jacob Koomen, M.D., M.P.H., State Health Director, 41 N.C.A.G. 792 (1972).

Subsection (a) does not require that defendant's alcohol concentration be expressed in "grams per 100 milliliters of blood" or "grams per 210 liters of breath" in order for the results to be admissible in evidence. See opinion of Attorney General to Mr. Joel H. Brewer, Assistant District Attorney, Ninth Judicial District, 54 N.C.A.G. 93 (1985).

The words "test or tests" in subsection (d) of this section are modified by the adjective "chemical" and refer only to chemical analyses of bodily substances to determine the alcohol content of the blood. See opinion of Attorney General to Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 40 N.C.A.G. 401 (1969).

The word "contacting" in subsection (d) of this section appears to mean "establishing communication with." In most cases this will involve assisting the accused in establishing telephonic communication with the person selected. The law-enforcement officer must allow the person selected to perform the additional test to have access to the body of the accused, but he is not required to transport the accused to the hospital or the doctor. See opinion of Attorney General to Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 40 N.C.A.G. 401 (1969).

Defendant has the right at any time to request an additional test by a qualified person of his own choosing. However, such test is "in addition to any administered at the direction of a law-enforcement officer," and "the person tested" by the law-enforcement officer cannot delay the officer's tests for that purpose. See opinion of Attorney General to Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 40 N.C.A.G. 401 (1969).

Warnings to Which Defendant Is Entitled. — Since September 1, 1969, by virtue of the new language added to G.S. 20-16.2(b) by Session Laws 1969, c. 1074, the officer must notify the accused that he is "permitted to call an attorney and to select a witness to view for him the testing procedures". Prior to the 1969 act, the law-enforcement officer was not required to give the defendant any warnings with respect to the chemical test or notify him of any rights regarding it. See opinion of Attorney General to Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 40 N.C.A.G. 401 (1969).

The officer need not give a warning that defendant has no right to an independent test administered by a qualified person of his own choosing unless he first submits to a chemical test given by the State. The only restriction upon administration of the officer's test is that the officer must permit the accused "to call an attorney and to select a witness to view for him the testing procedures," but "the testing procedures shall not be delayed for these purposes for a period of time over thirty (30) minutes from the time the accused person is notified of these rights." See opinion of Attorney General to Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 40 N.C.A.G. 401 (1969).

Officer Need Not Assist One Who Refuses to Submit to Test to Secure Independent Testing. — If defendant fails or refuses to submit to a chemical test given at the direction of a law-enforcement officer, yet asks for an independent test given by a qualified person, the officer need not assist defendant in contacting a qualified person to administer the test, as the officer is only required to assist "any person who has submitted to the chemical test under the provisions of G.S. 20-16.2." See opinion of Attorney General to Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 40 N.C.A.G. 401 (1969).

A Blood Alcohol Level of Less Than 0.10 (now 0.08) Percent Is Not Conclusive on a Drunken Driving Charge. — See opinion of Attorney General to the Honorable George H. Martin, Magistrate, Clay County, 40 N.C.A.G. 430 (1970).

§ 20-140. Reckless driving.

(a) Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

(c) Repealed by Session Laws 1983, c. 435, s. 23.

(d) Reckless driving as defined in subsections (a) and (b) is a Class 2 misdemeanor.

(e) Repealed by Session Laws 1983, c. 435, s. 23.

(f) A person is guilty of the Class 2 misdemeanor of reckless driving if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area either:

(1) Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others; or

(2) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. (1937, c. 407, s. 102; 1957, c. 1368, s. 1; 1959, c. 1264, s. 8; 1973, c. 1330, s. 3; 1979, c. 903, ss. 7, 8; 1981, c. 412, s. 4; c. 466, s. 7; c. 747, s. 66; 1983, c. 435, s. 23; 1985, c. 764, s. 28; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 539, s. 365; 1994, Ex. Sess., c. 24, s. 14(c); 2000-109, s. 7(b).)

Legal Periodicals. — For article on proof of negligence in North Carolina, see 48 N.C.L. Rev. 731 (1970).

CASE NOTES

I. In General.
II. Standard of Care, Negligence and Liability.
III. Evidence.
IV. Indictments, Warrants and Allegations.
V. Instructions.

I. IN GENERAL.

Editor's Note. — *Many of the cases cited below were decided under corresponding provisions of former law.*

This section is a safety statute. State v. Colson, 262 N.C. 506, 138 S.E.2d 121 (1964).

This section is a safety statute, designed for the protection of life, limb and property. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

Purpose of Section. — This section was enacted for the protection of persons and property and in the interest of public safety and the preservation of human life. State v. Norris, 242 N.C. 47, 86 S.E.2d 916 (1955).

This section is designed to prevent injury to persons or property and to prohibit the careless and reckless driving of automobiles on the public highways. State v. Colson, 262 N.C. 506, 138 S.E.2d 121 (1964).

The reckless driving and speed statutes are designed for the protection of life, limb and property. State v. Ward, 258 N.C. 330, 128 S.E.2d 673 (1962).

This section and § 20-141 constitute the hub of the motor traffic law around which all other provisions regulating the operation of automobiles revolve. Kolman v. Silbert, 219 N.C. 134, 12 S.E.2d 915 (1941).

A person may violate this section by either of the courses of conduct defined in subsections (a) and (b), or in both respects. State v. Dupree, 264 N.C. 463, 142 S.E.2d 5 (1965); Haynes v. Busby, 15 N.C. App. 106, 189 S.E.2d 653 (1972).

Violations Committed in One Continuous Operation of Vehicle Constitute One Offense. — If a defendant is guilty of the acts condemned either under subsection (a) or (b), or both, in one continuous operation of his vehicle, he is guilty of one offense of reckless driving and is not guilty of two separate offenses. State v. Lewis, 256 N.C. 430, 124 S.E.2d 115 (1962).

Trial on Warrants on Appeal from Mayor's Court Held a Nullity. — Where defendant was tried in a mayor's court on charges of operating a motor vehicle while under the influence of intoxicating liquor and reckless driving, and on appeal to the superior court, judgment was pronounced exceeding that permitted for the offense of reckless driving alone, it was held that the mayor's court was without jurisdiction of the charge of operating a motor vehicle while under the influence of intoxicating liquor, and even conceding that it had jurisdiction of the charge of reckless driving, the sentence exceeded that permitted for that offense, so that the trial of defendant in the superior court upon the warrants, without a bill of indictment first being found and returned, was a nullity. State v. Johnson, 214 N.C. 319, 199 S.E. 96 (1938).

Conviction Does Not Authorize Suspension of License. — The offense of reckless driving in violation of this section is not an offense for which the Department (now Division) of Motor Vehicles is authorized by G.S. 20-16 to suspend an operator's license. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

Nor Mandatory Revocation Thereof. — The offense of reckless driving in violation of this section is not an offense for which, upon conviction, the revocation of an operator's license is mandatory under G.S. 20-17. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

An acquittal of reckless driving in the recorder's court will not bar a prosecution for manslaughter in the superior court arising out of the same occurrence, as the two offenses differ both in grade and kind and are not the same in law or in fact, the one is not a lesser degree of the other, and the recorder is without jurisdiction over the charge of manslaughter. State v. Midgett, 214 N.C. 107, 198 S.E. 613 (1938).

An acquittal of reckless driving in a court having jurisdiction to try defendant for that offense would not bar prosecution of defendant in the superior court for involuntary manslaughter arising out of the same occurrence. Reckless driving and speed competition are not lesser included offenses of the charge of involuntary manslaughter. State v. Sawyer, 11 N.C. App. 81, 180 S.E.2d 387 (1971).

Improper Conviction as Violation of Code of Judicial Conduct. — Acts of respondent judge in convicting defendants of reckless driving when they were charged with driving while impaired were acts which respondent knew to be improper and ultra vires, or beyond the powers of his office; therefore respondent's actions constituted conduct in violation of Code Jud. Con., Canons 2A and 3A(1). In re Martin, 333 N.C. 242, 424 S.E.2d 118 (1993).

Reasonable Suspicion for Police to Stop. — Defendant's conduct in failing to stop at a road checkpoint, but instead, driving through it and nearly striking an officer, gave the officer reasonable suspicion that defendant had committed several crimes, including violations of G.S. 20-141.5(a) and G.S. 20-140(a); the officer's stop and arrest of defendant were valid. State v. Mitchell, 358 N.C. 63, 592 S.E.2d 543, 2004 N.C. LEXIS 17 (2004).

Applied in State v. Flinchem, 228 N.C. 149, 44 S.E.2d 724 (1947); State v. Williams, 237 N.C. 435, 75 S.E.2d 301 (1953); State v. McIntyre, 238 N.C. 305, 77 S.E.2d 698 (1953); State v. Turberville, 239 N.C. 25, 79 S.E.2d 359 (1953); State v. McRae, 240 N.C. 334, 82 S.E.2d 67 (1954); Redden v. Bynum, 256 N.C. 351, 123 S.E.2d 734 (1962); State v. Stroud, 256 N.C. 458, 124 S.E.2d 136 (1962); Benson v. Sawyer, 257 N.C. 765, 127 S.E.2d 549 (1962); Parker v. Bruce, 258 N.C. 341, 128 S.E.2d 561 (1962); Rundle v. Grubb Motor Lines, 300 F.2d 333 (4th Cir. 1962); Queen v. Jarrett, 258 N.C. 405, 128 S.E.2d 894 (1963); Scott v. Darden, 259 N.C. 167, 130 S.E.2d 42 (1963); State v. Wells, 259 N.C. 173, 130 S.E.2d 299 (1963); Williams v. Tucker, 259 N.C. 214, 130 S.E.2d 306 (1963); Russell v. Hamlett, 259 N.C. 273, 130 S.E.2d 395 (1963); Faulk v. Althouse Chem. Co., 259 N.C. 395, 130 S.E.2d 684 (1963); Jones v. C. B. Atkins Co., 259 N.C. 655, 131 S.E.2d 371 (1963); State v. Woolard, 260 N.C. 133, 132 S.E.2d 364 (1963); Scott v. Clark, 261 N.C. 102, 134 S.E.2d 181 (1964); Britt v. Mangum, 261 N.C. 250, 134 S.E.2d 235 (1964); Porter v. Pitt, 261 N.C. 482, 135 S.E.2d 42 (1964); Randall v. Rogers, 262 N.C. 544, 138 S.E.2d 248 (1964); Hall v. Little, 262 N.C. 618, 138 S.E.2d 282 (1964); Kight v. Seymour, 263 N.C. 790, 140 S.E.2d 410 (1965); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965); Bongardt v. Frink, 265 N.C. 130, 143 S.E.2d 286 (1965); State v. Abernathy, 265 N.C. 724, 145 S.E.2d 2 (1965); Drumwright v. Wood, 266 N.C. 198, 146 S.E.2d 1 (1966); Wells v. Bissette, 266 N.C. 774, 147 S.E.2d 210 (1966); Atwood v. Holland, 267 N.C. 722, 148 S.E.2d 851 (1966); State v. Moses, 272 N.C. 509, 158 S.E.2d 617 (1968); Morris v. Brigham, 6 N.C. App. 490, 170 S.E.2d 534 (1969); State v. Grissom, 17 N.C. App. 374, 194 S.E.2d 227 (1973); State v. McLawhorn, 43 N.C. App. 695, 260 S.E.2d 138 (1979); State v. Wells, 59 N.C. App. 682, 298 S.E.2d 73 (1982).

Cited in Hancock v. Wilson, 211 N.C. 129, 189 S.E. 631 (1937); State v. Crews, 214 N.C. 705, 200 S.E. 378 (1939); Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384 (1939); Bechtler v. Bracken, 218 N.C. 515, 11 S.E.2d 721 (1940); Etheridge v. Etheridge, 222 N.C. 616, 24 S.E.2d 477 (1943); Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946); State v. Wooten, 228 N.C. 628, 46 S.E.2d 868 (1948);

Singletary v. Nixon, 239 N.C. 634, 80 S.E.2d 676 (1954); State v. Bournais, 240 N.C. 311, 82 S.E.2d 115 (1954); Troxler v. Central Motor Lines, 240 N.C. 420, 82 S.E.2d 342 (1954); Hennis Freight Lines v. Burlington Mills Corp., 246 N.C. 143, 97 S.E.2d 850 (1957); Rick v. Murphy, 251 N.C. 162, 110 S.E.2d 815 (1959); Hunt v. Crawford, 253 N.C. 381, 117 S.E.2d 18 (1960); Fleming v. Drye, 253 N.C. 545, 117 S.E.2d 416 (1960); Pridgen v. Uzzell, 254 N.C. 292, 118 S.E.2d 755 (1961); Gathings v. Sehorn, 255 N.C. 503, 121 S.E.2d 873 (1961); Pittman v. Swanson, 255 N.C. 681, 122 S.E.2d 814 (1961); Powell v. Clark, 255 N.C. 707, 122 S.E.2d 706 (1961); Mason v. Gillikin, 256 N.C. 527, 124 S.E.2d 537 (1962); Hall v. Poteat, 257 N.C. 458, 125 S.E.2d 924 (1962); Greene v. Meredith, 264 N.C. 178, 141 S.E.2d 287 (1965); Southern Nat'l Bank v. Lindsey, 264 N.C. 585, 142 S.E.2d 357 (1965); Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Hout v. Harvell, 270 N.C. 274, 154 S.E.2d 41 (1967); Mabe v. Green, 270 N.C. 276, 154 S.E.2d 91 (1967); Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Toler v. Brink's, Inc., 1 N.C. App. 315, 161 S.E.2d 208 (1968); Rogers v. Rogers, 2 N.C. App. 668, 163 S.E.2d 645 (1968); State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968); Basden v. Sutton, 7 N.C. App. 6, 171 S.E.2d 77 (1969); Wilder v. Edwards, 7 N.C. App. 513, 173 S.E.2d 72 (1970); Broadnax v. Deloatch, 8 N.C. App. 620, 174 S.E.2d 314 (1970); Huggins v. Kye, 10 N.C. App. 221, 178 S.E.2d 127 (1970); Brewer v. Harris, 279 N.C. 288, 182 S.E.2d 345 (1971); Southwire Co. v. Long Mfg. Co., 12 N.C. App. 335, 183 S.E.2d 253 (1971); McNair v. Boyette, 282 N.C. 230, 192 S.E.2d 457 (1972); State v. Pate, 29 N.C. App. 35, 222 S.E.2d 741 (1976); State v. McKenzie, 29 N.C. App. 524, 225 S.E.2d 151 (1976); State v. Burrus, 30 N.C. App. 250, 226 S.E.2d 677 (1976); State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976); State v. McKenzie, 292 N.C. 170, 232 S.E.2d 424 (1977); State v. Snead, 35 N.C. App. 724, 242 S.E.2d 530 (1978); State v. Snead, 295 N.C. 615, 247 S.E.2d 893 (1978); State v. Davis, 37 N.C. App. 735, 247 S.E.2d 14 (1978); State v. Robinson, 40 N.C. App. 514, 253 S.E.2d 311 (1979); State v. Covington, 48 N.C. App. 209, 268 S.E.2d 231 (1980); State v. Donald, 51 N.C. App. 238, 275 S.E.2d 531 (1981); State v. Hefler, 60 N.C. App. 466, 299 S.E.2d 456 (1983); State v. Hefler, 310 N.C. 135, 310 S.E.2d 310 (1984); State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985); State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985); State v. Graves, 83 N.C. App. 126, 349 S.E.2d 320 (1986); Body ex rel. Body v. Varner, 107 N.C. App. 219, 419 S.E.2d 208 (1992); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); In re a Judge, No. 238 Brown, 351 N.C. 601, 527 S.E.2d 651, 2000 N.C. LEXIS 353 (2000); State v. Funchess, 141 N.C. App. 302, 540 S.E.2d 435, 2000 N.C. App. LEXIS 1398 (2000); State v. Phillips, 152 N.C. App. 679, 568 S.E.2d 300, 2002 N.C. App. LEXIS 975 (2002); Shinn v. Greeness, 218 F.R.D. 478, 2003 U.S. Dist. LEXIS 20872 (M.D.N.C. 2003); State v. Stokes, 174 N.C. App. 447, 621 S.E.2d 311, 2005 N.C. App. LEXIS 2495 (2005); State v. Hinchman, — N.C. App. —, 666 S.E.2d 199, 2008 N.C. App. LEXIS 1667 (2008).

II. STANDARD OF CARE, NEGLIGENCE AND LIABILITY.

This section prescribes a standard of care, and the standard fixed by the legislature is absolute. Aldridge v. Hasty, 240 N.C. 353, 82 S.E.2d 331 (1954); Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956); Lamm v. Gardner, 250 N.C. 540, 108 S.E.2d 847 (1959); Bondurant v. Mastin, 252 N.C. 190, 113 S.E.2d 292 (1960); Stockwell v. Brown, 254 N.C. 662, 119 S.E.2d 795 (1961); Boykin v. Bissette, 260 N.C. 295, 132 S.E.2d 616 (1963).

Fundamental to the right to operate any motor vehicle is the rule of the prudent man declared in this section, that he shall operate with due care and circumspection so as not to endanger others by his reckless driving. McEwen Funeral Serv. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

Duty of Motorist Generally. — Every operator of a motor vehicle is required to exercise reasonable care to avoid injury to persons or property of another, and a failure to so operate proximately resulting in injury to another gives rise to a cause of action. Scarlette v. Grindstaff, 258 N.C. 159, 128 S.E.2d 221 (1962); Miller v. Lucas, 267 N.C. 1, 147 S.E.2d 537 (1966).

A motorist must at all times operate his vehicle with due caution and circumspection, with due regard for the rights and safety of others, and at such speed and in such manner as will not endanger or be likely to endanger the lives or property of others. Morris v. Minix, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

A motorist must operate his vehicle at a reasonable rate of speed, keep a lookout for persons on or near the highway, decrease his speed when any special hazard exists with respect to pedestrians, and, if circumstances warrant, he must give warning of his approach by sounding his horn. Morris v. Minix, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

A motorist is under duty at all times to operate his vehicle at a reasonable rate of speed and maintain constant attention to the highway. Williams v. Henderson, 230 N.C. 707, 55 S.E.2d 462 (1949); Goodson v. Williams, 237 N.C. 291, 74 S.E.2d 762 (1953); Price v. Miller, 271 N.C. 690, 157 S.E.2d 347 (1967).

It is the duty of one proceeding along a public highway to maintain a proper lookout and to exercise due care to avoid colliding with vehicles entering the highway from private premises. Davis v. Imes, 13 N.C. App. 521, 186 S.E.2d 641 (1972).

The driver of an automobile is required at all times to operate his vehicle with due regard to traffic and conditions of the highway, and to keep his car under control and decrease his speed when special hazards exist by reason of weather or highway conditions or when necessary to avoid colliding with any other vehicle. This requirement, as expressed in this section and G.S. 20-141, constitutes the hub of the motor vehicle law around which other provisions regulating the operation of motor vehicles revolve. Cox v. Lee, 230 N.C. 155, 52 S.E.2d 355 (1949); Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1963).

Unlawfulness May Depend on Circumstances. — Driving an automobile with tires which are known to be worn out and slick, on a highway which is wet and slippery, at a rate of speed not ordinarily unlawful, under this section may be unlawful under all the circumstances shown by the evidence. Waller v. Hipp, 208 N.C. 117, 179 S.E. 428 (1935).

In light of the provisions of this section and G.S. 20-141, it is clear that whether or not a speed of 55 miles an hour is lawful depends upon the circumstances at the time. These sections provide that a motorist must at all times drive with due caution and circumspection and at a speed and in a manner so as not to endanger or be likely to endanger any person or property. At no time may a motorist lawfully drive at a speed greater than is reasonable and prudent under the conditions then existing. Primm v. King, 249 N.C. 228, 106 S.E.2d 223 (1958).

The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. Powell v. Cross, 263 N.C. 764, 140 S.E.2d 393 (1965).

Care Required in Emergency. — While the operator of a public automobile is obligated to exercise a high degree of care, he is not charged with the necessity either of possessing superhuman powers of anticipation or of exercising such powers in a threatened emergency. Love v. Queen City Lines, 206 N.C. 575, 174 S.E. 514 (1934).

Effect of Using Prudence After Violation. — A reckless violation which put a driver in such position that he could not avoid an injury, though he attempted to do so after the danger became apparent, is not excused by the subsequent attempt. State v. Gray, 180 N.C. 697, 104 S.E. 647 (1920).

If the peril suddenly confronting the defendant was due to excessive speed or to his failure to maintain a proper lookout, the fact that care was exercised after the discovery of the peril would not excuse the negligent conduct which was the proximate cause of the injury and damage. Brunson v. Gainey, 245 N.C. 152, 95 S.E.2d 514 (1956).

The fact that defendant at length made an effort to avoid an accident does not avail him when it appears that his recklessness was responsible for his inability to control his vehicle. State v. Ward, 258 N.C. 330, 128 S.E.2d 673 (1962).

When Motorist Is Guilty of Reckless Driving. — Under this section, a person is guilty of reckless driving (1) if he drives an automobile on a public highway in this State, carelessly and heedlessly, in a willful or wanton disregard of the rights or safety of others, or (2) if he drives an automobile on a public highway in this State without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. State v. Folger, 211 N.C. 695, 191 S.E. 747 (1937). See also, State v. Norris, 242 N.C. 47, 86 S.E.2d 916 (1955).

Under this section a person is guilty of reckless driving if he drives an automobile on a public highway in this State without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. State v. Floyd, 15 N.C. App. 438, 190 S.E.2d 353, cert. denied, 281 N.C. 760, 191 S.E.2d 363 (1972).

Court refused to review G.S. 20-140, the careless and reckless statute, as to a trial court's ruling that 14 C.F.R. § 91.13 was too vague and ambiguous to constitute North Carolina's public policy in the context of the wrongful termination of an at-will employee. G.S. 20-140 was a reckless driving motor vehicle statute and the instant case involved safety relating to a flight engineer's schedule. McDonnell v. Tradewind Airlines, Inc., — N.C. App. —, 670 S.E.2d 302, 2009 N.C. App. LEXIS 22 (2009).

Mere failure to keep a reasonable lookout does not constitute reckless driving. To this must be added dangerous speed or perilous operation. Dunlap v. Lee, 257 N.C. 447, 126 S.E.2d 62 (1962); State v. Dupree, 264 N.C. 463, 142 S.E.2d 5 (1965); Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Haynes v. Busby, 15 N.C. App. 106, 189 S.E.2d 653 (1972).

While the fact of a rear-end collision offers some evidence of negligence, it is not sufficient to present the question of defendant's violation of this section when the fact of accident is combined only with the failure to keep a proper lookout, and not with excessive speed or following too closely. Nance v. Williams, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

Entering Intersection Closely in Front

of Plainly Visible Automobile. — The act of a driver in entering an intersection so closely in front of an automobile which is plainly visible to him, approaching along an intersecting four-lane highway, that the driver of the car does not have sufficient time in the exercise of reasonable care to avoid a collision, constitutes a violation of subsections (a) and (b) of this section, and is negligence per se. Snell v. Caudle Sand & Rock Co., 267 N.C. 613, 148 S.E.2d 608 (1966).

Driving on Wrong Side of Road. — The mere fact that defendant's automobile was on the left of the center line in the direction in which it was traveling when the collision occurred, without any evidence that it was being operated at a dangerous speed or in a perilous manner, except being on the wrong side of the road some 40 feet before the collision, does not show on defendant's part an intentional or willful violation of subsection (b) of this section; nor does it show an unintentional violation of subsection (a) accompanied by such recklessness or carelessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting to a thoughtless disregard of consequences, or a heedless indifference to the safety of others, as imports criminal responsibility; and, hence, does not make out a case of reckless driving sufficient to carry the case to the jury. State v. Dupree, 264 N.C. 463, 142 S.E.2d 5 (1965).

Skidding. — The mere skidding of a motor vehicle is not evidence of, and does not imply, negligence. But skidding may form the basis of a recovery where it and the resulting damage is caused from some fault of the operator amounting to negligence on his part. Webb v. Clark, 264 N.C. 474, 141 S.E.2d 880 (1965).

When the condition of a road is such that skidding may be reasonably anticipated, the driver of a vehicle must exercise care commensurate with the danger to keep the vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. Webb v. Clark, 264 N.C. 474, 141 S.E.2d 880 (1965).

Violation of Traffic Regulation. — The simple violation of a traffic regulation which does not involve actual danger to life, limb or property, while importing civil liability if damage or injury ensue, would not perforce constitute the criminal offense of reckless driving. State v. Cope, 204 N.C. 28, 167 S.E. 456 (1933); State v. Floyd, 15 N.C. App. 438, 190 S.E.2d 353, cert. denied, 281 N.C. 760, 191 S.E.2d 363 (1972).

Neither the intentional nor the unintentional violation of a traffic law without more constitutes reckless driving. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Haynes v. Busby, 15 N.C. App. 106, 189 S.E.2d 653 (1972).

What Is Admitted by Pleading Guilty to Reckless Driving. — By pleading guilty to reckless driving, defendant admits he was operating a car in a criminally negligent and unreasonable manner and in doing so exposed those traveling on the road, as well as those situated adjacent to it, to unnecessary danger. Wyatt v. Gilmore, 57 N.C. App. 57, 290 S.E.2d 790 (1982).

A violation of this section is negligence per se. Stegall v. Sledge, 247 N.C. 718, 102 S.E.2d 115 (1958); Carswell v. Lackey, 253 N.C. 387, 117 S.E.2d 51 (1960); Robbins v. Harrington, 255 N.C. 416, 121 S.E.2d 584 (1961); Dunlap v. Lee, 257 N.C. 447, 126 S.E.2d 62 (1962); Boykin v. Bissette, 260 N.C. 295, 132 S.E.2d 616 (1963); Southern Nat'l Bank v. Lindsey, 264 N.C. 585, 142 S.E.2d 357 (1965); Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967).

Reckless driving is made up of continuing acts, or a series of acts, which, in themselves, constitute negligence. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967).

But Question of Proximate Cause Is Ordinarily for Jury. — The violation of this and succeeding sections enacted for the safety of those driving upon the highway is negligence per se, and when such violation is admitted or established, the question of proximate cause is ordinarily for the jury. Godfrey v. Queen City Coach Co., 201 N.C. 264, 159 S.E. 412 (1931); King v. Pope, 202 N.C. 554, 163 S.E. 447 (1932).

The better rule under this and the following section is that except where the evidence is so conclusive that there could be, in the minds of reasonable men, no doubt as to the plaintiff's negligence contributing to the injury, the question should be left to the jury. Morris v. Sells-Floto Circus, Inc., 65 F.2d 782 (4th Cir. 1933).

Findings by Jury Supporting Conclusion of Violation of Section. — Findings by the jury that certain acts imported a thoughtless disregard for the consequences or a heedless indifference to the safety and rights of others would support a conclusion that the minor plaintiff operated her car in violation of this section. That would constitute negligence per se and, if a proximate cause of the collision, would constitute actionable negligence. Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969).

Factual Question for Jury. — Whether defendant was correct in believing movement could be made in safety under the circumstances was a factual question for the jury. Williams v. Hall, 100 N.C. App. 655, 397 S.E.2d 767 (1990).

The language of this section defines culpable negligence. State v. Roberson, 240 N.C. 745, 83 S.E.2d 798 (1954); State v. Dupree, 264 N.C. 463, 142 S.E.2d 5 (1965); Southern Nat'l

Bank v. Lindsey, 264 N.C. 585, 142 S.E.2d 357 (1965).

The language in each subsection of the reckless driving statute defines culpable negligence. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969); Haynes v. Busby, 15 N.C. App. 106, 189 S.E.2d 653 (1972).

An intentional, willful, or wanton violation of a statute or ordinance, designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

What Is Culpable Negligence. — Culpable negligence is such recklessness or carelessness, proximately resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others. The intentional, willful or wanton violation of a safety statute or ordinance which proximately results in injury is culpable negligence; an unintentional violation, unaccompanied by recklessness or probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, is not. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969); Haynes v. Busby, 15 N.C. App. 106, 189 S.E.2d 653 (1972).

The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

Culpable Negligence and Actionable Negligence Distinguished. — Culpable negligence in the law of crimes is something more than actionable negligence in the law of torts. State v. Roberson, 240 N.C. 745, 83 S.E.2d 798 (1954).

Where there is an unintentional or inadvertent violation of this section, such violation, standing alone, does not constitute culpable negligence in the law of crimes as distinguished from actionable negligence in the law of torts. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Sealy, 253 N.C. 802, 117 S.E.2d 793 (1961).

Evidence Held Sufficient to Show Actionable Negligence. — Evidence of greatly excessive speed in violation of the speed restrictions of G.S. 20-141, and of reckless driving in violation of this section, were sufficient to make out a case of actionable negligence. Bell v. Maxwell, 246 N.C. 257, 98 S.E.2d 33 (1957).

All the evidence tended to show that plaintiff's decedent was killed by the actionable negligence of the driver of the automobile in which he was a passenger in driving it at an excessive speed in violation of former subdivision (4) of G.S. 20-141(b), and in a reckless manner in violation of this section. Bridges v. Graham, 246 N.C. 371, 98 S.E.2d 492 (1957).

If plaintiff's evidence does not establish civil negligence, a fortiori, it will not prove reckless driving, which is criminal negligence. Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969).

Violation of this section gives rise to both civil and criminal liability. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Rhyne v. O'Brien, 54 N.C. App. 621, 284 S.E.2d 122 (1981).

And May Involve Manslaughter. — A violation of this section may subject the offender to both civil and criminal liability. There may be a violation of this section as a result of which the offender is subjected, in addition to civil liability, only to the penalty prescribed by statute, but when the negligent acts are reckless to the point of culpability and are sufficient to evince a complete and thoughtless disregard for the rights and safety of other persons using the highways, they then become criminally negligent and the driver of a motor vehicle so offending may be called upon to answer for manslaughter. State v. McLean, 234 N.C. 283, 67 S.E.2d 75 (1951).

Death caused by a violation of either subsection (b) of this section or G.S. 20-138 (now G.S. 20-138.1) may constitute manslaughter. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Where Violation Caused Accident and Death. — A condition precedent to a conviction of manslaughter for the violation of either subsection (b) of this section or G.S. 20-138 (now G.S. 20-138.1) or both is that the violation of either one or both must have caused the accident and the death of decedent. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Proof of Violation in Prosecution for Murder, Manslaughter or Assault. — North Carolina statutes on the subject of regulating the care to be used by those driving motor vehicles upon the State's highways are designed to secure the reasonable safety of persons in and upon the highways of the State, and where death or great bodily harm results, evidence that the accused was, at the time charged, violating these provisions may be properly received upon a trial for murder or for manslaughter in appropriate instances, or as evidence of an assault where no serious injury has resulted. State v. Sudderth, 184 N.C. 753, 114 S.E. 828 (1922).

Punitive Damages Justified. — Evidence that defendant's tractor trailer was willfully and wantonly operated on the wrong side of the highway in the face of plaintiff's approaching vehicle in violation of several safety statutes, including this section, was sufficient to support an award of punitive damages. Marsh ex rel. Marsh v. Trotman, 96 N.C. App. 578, 386 S.E.2d 447 (1989).

III. EVIDENCE.

Evidence of Reckless Driving Held Sufficient to Go to Jury. — State's evidence tending to show that defendant, driving 60 miles an hour, crashed into the rear of a car driven in the same direction on its right-hand side of the highway at 20 or 25 miles an hour, and that the driver of the other car saw defendant approaching at an excessive speed but that defendant struck the car before its driver could get on the shoulders of the road, together with evidence showing that defendant's car struck the other car with terrific force, was sufficient to be submitted to the jury upon a warrant charging defendant with reckless driving under this section. State v. Wilson, 218 N.C. 769, 12 S.E.2d 654 (1941).

Evidence tending to show that defendant was driving some 80 to 90 miles per hour over a highway on which several other vehicles were moving at the time was sufficient to overrule defendant's motion to nonsuit and to sustain a conviction of reckless driving. State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

Where from the evidence it was inferable that defendant in rounding a curve failed to exercise due care to maintain a proper lookout and to keep his car under control, and that he was driving recklessly in violation of this section, the evidence was sufficient to carry the case to the jury on the issue of actionable negligence. Tatem v. Tatem, 245 N.C. 587, 96 S.E.2d 725 (1957).

Evidence tending to show that defendant driver saw a truck approaching with a red flashing light on its front and a fogging machine in the truck emitting chemical fog which completely obscured the entire highway, and that defendant driver slowed his vehicle but drove into the fog at a rather good rate of speed and so continued on his right side of the highway until he was hit head-on by a truck traveling in the opposite direction, was sufficient to require submission to the jury of the question whether defendant was operating his vehicle in violation of this section. Moore v. Plymouth, 249 N.C. 423, 106 S.E.2d 695 (1959).

Evidence that defendant was driving on the public highways of the State while under the influence of intoxicating liquor in violation of G.S. 20-138 (now G.S. 20-138.1), and was driving recklessly in violation of this section, which proximately caused the death of a passenger in his car, was sufficient to be submitted to the jury in a prosecution for manslaughter. State v. Blankenship, 229 N.C. 589, 50 S.E.2d 724 (1948).

For additional cases holding that the evidence was properly submitted to the jury on the question of reckless driving, see Puckett v. Dyer, 203 N.C. 684, 167 S.E. 43 (1932); State v. Holbrook, 228 N.C. 620, 46 S.E.2d 843 (1948); State v. Steelman, 228 N.C. 634, 46 S.E.2d 845 (1948); State v. Blankenship, 229 N.C. 589, 50 S.E.2d 724 (1948); State v. Sawyer, 230 N.C. 713, 55 S.E.2d 464 (1949); State v. Call, 236 N.C. 333, 72 S.E.2d 752 (1952); State v. Roberson, 240 N.C. 745, 83 S.E.2d 798 (1954); Stockwell v. Brown, 254 N.C. 662, 119 S.E.2d 795 (1961).

Where an officer stated defendant sped at a rate "very much" in excess of 15 miles per hour over the speed limit and driving into oncoming traffic prior to slamming on the brakes and sliding to a halt in front of an occupied mobile home, that was sufficient evidence for the jury to find defendant guilty of eluding an officer while speeding in excess of 15 miles over the speed limit and driving recklessly. State v. Davis, 163 N.C. App. 587, 594 S.E.2d 57, 2004 N.C. App. LEXIS 408 (2004), cert. denied, 358 N.C. 547, 599 S.E.2d 564 (2004).

State presented sufficient evidence of the aggravating factors necessary to support defendant's conviction for felony fleeing to elude arrest under G.S. 20-141.5(b); during a high-speed chase, defendant was driving more than 15 mph over the speed limit and he was driving recklessly under G.S. 20-140. State v. Smith, 178 N.C. App. 134, 631 S.E.2d 34, 2006 N.C. App. LEXIS 1290 (2006).

Evidence of Reckless Driving Held Sufficient to Survive Motion to Dismiss. — Evidence that defendant drove his motorcycle at a speed and in a manner so as to endanger or be likely to endanger person or property was sufficient to survive a motion to dismiss the charge of reckless driving. State v. Teel, 180 N.C. App. 446, 637 S.E.2d 288, 2006 N.C. App. LEXIS 2380 (2006).

Substantial evidence existed to support the trial court's denial of defendant's request that the charge against defendant of reckless driving pursuant to G.S. 20-140(b) be dismissed. The State presented evidence that: (1) defendant drove defendant's vehicle while impaired; and (2) defendant was driving the vehicle well above the speed limit. State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008).

Evidence Held Insufficient to Show Violation of Section. — Allegation that defendant violated the provisions of this section in that he operated his truck carelessly and heedlessly in willful and wanton disregard of rights and safety of others, at a speed and in a manner to endanger or be likely to endanger person and property, and by operating same to the left when he could have turned to the right and passed without striking plaintiff's testator, was not supported by evidence. Tysinger v. Coble Dairy Prods., 225 N.C. 717, 36 S.E.2d 246 (1945).

Evidence that an ambulance on emergency duty, with its siren sounding at "peak," was traveling north along a four-lane street and entered an intersection with another, more heavily traveled, four-lane street against a red light, that a car traveling east and a cab traveling west along the intersecting street stopped, but that defendant's bus, traveling west in the northern lane of the intersecting street with its view obstructed by the stationary cab, etc., proceeded into the intersection with the green light and struck the right side of the ambulance in the northeastern part of the intersection, failed to show negligence on the part of the operator of the bus under this section or G.S. 20-156. McEwen Funeral Serv. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

Evidence, while sufficient to present the question of negligence, did not disclose careless and reckless driving within the purview of this section. Williams v. Boulerice, 269 N.C. 499, 153 S.E.2d 95 (1967).

Circumstantial evidence tending to identify defendant as the driver of car driven in a reckless manner was held sufficient to be submitted to the jury. State v. Dooley, 232 N.C. 311, 59 S.E.2d 808 (1950).

For case holding evidence sufficient to sustain negligence and proximate cause as a matter of law, see Smith v. Miller, 209 N.C. 170, 183 S.E. 370 (1936).

IV. INDICTMENTS, WARRANTS AND ALLEGATIONS.

An indictment under this section may be consolidated for trial with an indictment under § 20-217, which prohibits the driver of a motor vehicle from passing a standing school bus on the highway without first bringing said motor vehicle to a complete stop. State v. Webb, 210 N.C. 350, 186 S.E. 241 (1936).

Warrants under this section which charge the offense almost literally in the words of the statute are sufficient. State v. Wallace, 251 N.C. 378, 111 S.E.2d 714 (1959).

Particularity Required in Pleading Reckless Driving. — To plead reckless driving effectively, the pleader must particularize with reference to the specific rules of the road which the motorist was violating and his manner of doing so. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967).

To plead reckless driving effectively, a party must allege facts which show that the other was violating specific rules of the road in a criminally negligent manner. Roberts v. Pilot Freight Carriers, 273 N.C. 600, 160 S.E.2d 712 (1968); Nance v. Williams, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

Allegations of reckless driving in the words of this section, without more, do not justify a charge of reckless driving. Roberts v. Pilot Freight Carriers, 273 N.C. 600, 160 S.E.2d 712 (1968); Nance v. Williams, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

Allegations as to reckless driving in the words of this section, without specifying wherein the party was reckless, amount to no more than an allegation that the party charged was negligent. They are but conclusions of law which are not admitted by demurrer. They do not justify a charge on reckless driving. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967).

Where a complaint alleged reckless driving on a university campus as a violation of this section, the fact that the complaint alleged a violation of this section instead of a violation of former G.S. 20-140.1 was not fatal in the light of former G.S. 1-151, providing that pleadings shall be liberally construed, and in light of the theory of the trial court that campus roads were highways within the purview of this section. Rhyne v. Bailey, 254 N.C. 467, 119 S.E.2d 385 (1961).

Warrants Held Sufficient. — Warrant charging that defendant "did unlawfully and willfully operate a motor vehicle on a State highway in a careless and reckless manner and without due regard for the rights and safety of others and their property in violation" of municipal ordinances and contrary to the form of the statute was held sufficient to charge defendant with reckless driving under this section, since, although the warrant failed to follow the language of the statute in accordance with the better practice, it did charge facts sufficient to enable the court to proceed to judgment, and the charge of violating the municipal ordinances could be treated as surplusage. State v. Wilson, 218 N.C. 769, 12 S.E.2d 654 (1941).

Warrant charging defendant with driving under the influence and reckless driving, which were treated as separate counts, was sufficient, since each count charged all the essential elements constituting the violation of law charged.

State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

Indictment Held Sufficient. — As the original language of the indictment tracked the language of G.S. 20-140(b), the indictment was sufficient to charge reckless driving. State v. Wade, 161 N.C. App. 686, 589 S.E.2d 379, 2003 N.C. App. LEXIS 2268 (2003), cert. denied, 358 N.C. 241, 594 S.E.2d 33 (2004).

V. INSTRUCTIONS.

It is not sufficient for the judge to read this section and then leave it to the jury to apply the law to the facts and to decide for themselves what plaintiff did, if anything, which constituted reckless driving. Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Roberts v. Pilot Freight Carriers, Inc., 273 N.C. 600, 160 S.E.2d 712 (1968); Nance v. Williams, 2 N.C. App. 345, 163 S.E.2d 47 (1968); Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969).

As to requirements in charging on reckless driving under former § 1-180, see State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949); Ingle v. Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967); Roberts v. Pilot Freight Carriers, Inc., 273 N.C. 600, 160 S.E.2d 712 (1968); Nance v. Williams, 2 N.C. App. 345, 163 S.E.2d 47 (1968); Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969).

Instruction Erroneous When Not Supported by Evidence. — Where there is no evidence that the person charged with negligence drive his vehicle in such a manner as to constitute reckless driving, it is error for the court to charge that reckless driving is an element of negligence to be considered by the jury. Ford v. Jones, 6 N.C. App. 722, 171 S.E.2d 103 (1969).

For case holding instruction on reckless driving reversible error, see State v. Folger, 211 N.C. 695, 191 S.E. 747 (1937).

In a manslaughter case based on reckless driving of defendant, an instruction on reckless driving which did not charge the jury to find that such reckless driving was the proximate cause of the wreck and resultant death of the deceased was erroneous. State v. Mundy, 243 N.C. 149, 90 S.E.2d 312 (1955).

§ 20-140.1: Repealed by Session Laws 1973, c. 1330, s. 39.

§ 20-140.2. Overloaded or overcrowded vehicle.

No person shall operate upon a highway or public vehicular area a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the highway or public vehicular area, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle. (1953, c. 1233; 1967, c. 674, s. 1; 1973, c. 1143, s. 2; c. 1330, s. 4.)

CASE NOTES

Applied in Snellings v. Roberts, 12 N.C. App. 476, 183 S.E.2d 872 (1971).

Cited in State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683, 2008 N.C. App. LEXIS 1228 (2008).

§ 20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways, it shall be unlawful for any person:

(1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on said highways.

(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on said highways.

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.

(4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.

(5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or at designated parking areas.

(6) To fail to yield the right-of-way when entering the highway to any vehicle already travelling on the highway.

(7) Notwithstanding any other subdivision of this section, a law enforcement officer may cross the median of a divided highway when the officer has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the officer has reasonable grounds to believe that the officer's presence is immediately required at a location which would necessitate crossing a median of a divided highway for this purpose. Fire department vehicles and public or private ambulances and rescue squad emergency service vehicles traveling in response to a fire alarm or other emergency call may cross the median of a divided highway when assistance is immediately required at a location which would necessitate the vehicle crossing a median of a divided highway for this purpose. (1973, c. 1330, s. 5; 1977, c. 731, s. 1; 1999-330, s. 5.)

Cross References. — For similar section, see G.S. 136-89.58.

CASE NOTES

Applied in Oakes v. James, 68 N.C. App. 765, 315 S.E.2d 802 (1984).

Cited in State v. Dixon, 77 N.C. App. 27, 334 S.E.2d 433 (1985).

§ 20-140.4. Special provisions for motorcycles and mopeds.

(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall pay a penalty of twenty-five dollars and fifty cents ($25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Conviction of an infraction under this section has no other consequence.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. (1973, c. 1330, s. 6; 1989, c. 711, s. 1; 2007-360, s. 7; 2009-451, s. 15.20(k).)

Cross References. — For requirements for helmet use by persons below the age of 16 who are operating a bicycle or are a passenger on a bicycle, see G.S. 20-171.9.

Editor's Note. — Session Laws 2009-451, s. 15.20(n), provides, in part: "Subsections (a), (j), and (k) of this section become effective September 1, 2009, and apply to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-360, s. 7, effective January 1, 2008, rewrote subdivision (a)(2).

Session Laws 2009-451, s. 15.20(k), effective September 1, 2009, in subsection (c), substituted "pay a penalty of twenty-five dollars and fifty cents ($25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b)" for "be fined according to G.S. 20-135.2A(e) and (f)" in the first sentence, and added the last sentence; and added subsection (d). For applicability provisions, see Editor's note.

Legal Periodicals. — For note on statutory requirement of safety helmets for motorcyclists, see 6 Wake Forest Intra. L. Rev. 349 (1970).

CASE NOTES

As to constitutionality of former subsection (b) of § 20-140.2, see State v. Anderson, 275 N.C. 168, 166 S.E.2d 49 (1969).

Standing to Challenge This Statute. — Respondents, who were not wearing safety helmets of any kind when they were cited, did not fall in the class of persons who might be adversely affected by this statute's alleged vagueness as to the type of helmet motorcyclists ought to wear and, therefore, lacked standing to challenge the statute on constitutional grounds. State v. Barker, 138 N.C. App. 304, 531 S.E.2d 228, 2000 N.C. App. LEXIS 604 (2000).

Cited in Fortson v. McClellan, 131 N.C. App. 635, 508 S.E.2d 549 (1998).

§ 20-140.5. Special mobile equipment may tow certain vehicles.

Special mobile equipment may not tow any vehicle other than the following:

(1) A single passenger vehicle that can carry no more than nine passengers and is carrying no passengers.

(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or less, is carrying no passengers, and does not exceed its registered weight. (1991 (Reg. Sess., 1992), c. 1015, s. 3; 1999-438, s. 29.)

§ 20-141. Speed restrictions.

(a) No person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

(1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.

(2) Fifty-five miles per hour outside municipal corporate limits for all vehicles except for school buses and school activity buses.

(c) Except while towing another vehicle, or when an advisory safe-speed sign indicates a slower speed, or as otherwise provided by law, it shall be unlawful to operate a passenger vehicle upon the interstate and primary highway system at less than the following speeds:

(1) Forty miles per hour in a speed zone of 55 miles per hour.

(2) Forty-five miles per hour in a speed zone of 60 miles per hour or greater.

These minimum speeds shall be effective only when appropriate signs are posted indicating the minimum speed.

(d)(1) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that any speed allowed by subsection (b) is greater than is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as part of the Interstate Highway System or any part of a controlled-access highway (either inside or outside the corporate limits of a municipality), the Department of Transportation shall determine and declare a reasonable and safe speed limit.

(2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe under the conditions found to exist upon any part of a highway designated as part of the Interstate Highway System or any part of a controlled-access highway (either inside or outside the corporate limits of a municipality) the Department of Transportation shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour.

Speed limits set pursuant to this subsection are not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(e) Local authorities, in their respective jurisdictions, may authorize by ordinance higher speeds or lower speeds than those set out in subsection (b) upon all streets which are not part of the State highway system; but no speed so fixed shall authorize a speed in excess of 55 miles per hour. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice thereof are erected upon the part of the streets affected.

(e1) Local authorities within their respective jurisdictions may authorize, by ordinance, lower speed limits than those set in subsection (b) of this section on school property. If the lower speed limit is being set on the grounds of a public school, the local school administrative unit must request or consent to the lower speed limit. If the lower speed limit is being set on the grounds of a private school, the governing body of the school must request or consent to the lower speed limit. Speed limits established pursuant to this subsection shall become effective when appropriate signs giving notice of the speed limit are erected upon affected property. A person who drives a motor vehicle on school property at a speed greater than the speed limit set and posted under this subsection is responsible for an infraction and is required to pay a penalty of not less than twenty-five dollars ($25.00).

(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

When local authorities annex a road on the State highway system, the speed limit posted on the road at the time the road was annexed shall remain in effect until both the Department and municipality pass concurrent ordinances to change the speed limit.

The Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. The Department of Transportation shall determine a reasonable and safe speed limit in the same manner as is provided in G.S. 20-141(d)(1) and G.S. 20-141(d)(2) for changing the speed limits outside of municipalities, without action of the municipality.

(g) Whenever the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Department of Transportation or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the Department of Transportation and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(i) The Department of Transportation shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(j) Repealed by Session Laws 1997, c. 443, s. 19.26(b).

(j1) A person who drives a vehicle on a highway at a speed that is either more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred or over 80 miles per hour is guilty of a Class 2 misdemeanor.

(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under this section shall be required to pay a penalty of two hundred fifty dollars ($250.00). This penalty shall be imposed in addition to those penalties established in this Chapter. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. The additional penalty imposed by this subsection applies only if sign [signs] are posted at the beginning and end of any segment of the highway work zone stating the penalty for speeding in that segment of the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for a violation of this section while in a highway work zone shall indicate the vehicle speed and speed limit posted in the segment of the work zone, and determine whether the individual committed a violation of G.S. 20-141(j1). Upon an individual's conviction of a violation of this section while in a highway work zone, the clerk of court shall report that the vehicle was in a work zone at the time of the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles.

(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed of 15 miles per hour or more above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained.

(k) Repealed by Session Laws 1995 (Regular Session, 1996), c. 652, s. 1.

(*l*) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, including municipal charters, any speed limit on any portion of the public highways within the jurisdiction of this State shall be uniformly applicable to all types of motor vehicles using such portion of the highway, if on November 1, 1973, such portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. Provided, however, that a lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. The requirement for a uniform speed limit hereunder shall not apply to any portion of the highway during such time as the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of the highway.

(m) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the operator of a vehicle from the duty to decrease speed as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, and to avoid injury to any person or property.

(n) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the failure of a motorist to stop his vehicle within the radius of its headlights or the range of his vision shall not be held negligence per se or contributory negligence per se.

(o) A violation of G.S. 20-123.2 shall be a lesser included offense in any violation of this section, and shall be subject to the following limitations and conditions:

(1) A violation of G.S. 20-123.2 shall be recorded in the driver's official record as "Improper equipment — Speedometer."

(2) The lesser included offense under this subsection shall not apply to charges of speeding in excess of 25 miles per hour or more over the posted speed limit.

No drivers license points or insurance surcharge shall be assessed on account of a violation of this subsection.

(p) A driver charged with speeding in excess of 25 miles per hour over the posted speed limit shall be ineligible for a disposition of prayer for judgment continued. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; 1947, c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949; 1967, c. 106; 1971, c. 79, ss. 1-3; 1973, c. 507, s. 5; c. 1330, s. 7;

1975, c. 225; 1977, c. 367; c. 464, s. 34; c. 470; 1983, c. 131; 1985, c. 764, ss. 29, 30; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 164; 1991 (Reg. Sess., 1992), c. 818, s. 1; c. 1034, s. 1; 1993, c. 539, ss. 366, 367; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 652, s. 1; 1997-341, s. 1; 1997-443, s. 19.26(b); 1997-488, s. 1; 1999-330, s. 3; 2000-109, s. 7(c); 2003-110, s. 1; 2004-203, s. 70(a); 2005-349, s. 11; 2007-380, ss. 1, 2; 2009-234, ss. 1, 2.)

Local Modification. — Burke: 1975, c. 533; Mecklenburg: 1983, c. 153; Richmond: 1975, c. 17.

Cross References. — As to minimum speed on inside lanes of certain dual-lane highways, see G.S. 20-146(e).

Editor's Note. — This section was amended by Session Laws 2009-234, s. 2, in the coded bill drafting format provided by G.S. 120-20.1. In subsection (j2), the word "signs" was substituted for "sign" but the substitution was not indicated by struck through and underlined text. Subsection (j2) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-234, s. 1, effective June 30, 2009, added the second paragraph of subsection (f).

Session Laws 2009-234, s. 2, effective December 1, 2009, and applicable to offenses committed on or after that date, in subsection (j2), in the first paragraph, in the fourth sentence, inserted "The additional penalty imposed by" at the beginning, and substituted "if signs are posted at the beginning and end of any segment of the highway work zone stating the penalty for speeding in that segment of the" for "if a signs posted at the beginning of the highway work zone states the penalty for speeding in the," and in the second paragraph, inserted "segment of the" and "and determine whether the individual committed a violation of G.S. 20-141(j1)" in the first sentence.

Legal Periodicals. — For comment on the 1941 amendment, see 19 N.C.L. Rev. 455 (1941).

For comment on the 1949 amendment, see 27 N.C.L. Rev. 473 (1949).

For comment on the 1953 amendment, see 31 N.C.L. Rev. 415 (1953).

For article on proof of negligence in North Carolina, see 48 N.C.L. Rev. 731 (1970).

CASE NOTES

I. In General.
II. Standard of Care and Negligence.
III. Evidence.
IV. Instructions.

I. IN GENERAL.

Editor's Note. — *Most of the cases cited below were decided under corresponding provisions of earlier laws or under this section as it stood before its revision by the second 1973 amendment.*

Constitutionality of Former Provisions. — Former provisions of this section setting different speed limits for different types of vehicles were constitutional, since a difference in speed based upon weight and size of motor vehicles bears a real and substantial relationship to the public health, safety, morals or some other phase of the public welfare. State v. Bennor, 6 N.C. App. 188, 169 S.E.2d 393 (1969).

Constitutionality. — Subsection (m) of this section is not unconstitutionally vague. State v. Worthington, 89 N.C. App. 88, 365 S.E.2d 317 (1988).

Purpose of Section. — This section was enacted for the protection of persons and property and in the interest of public safety and the preservation of human life. State v. Norris, 242 N.C. 47, 86 S.E.2d 916 (1955); State v. Bennor, 6 N.C. App. 188, 169 S.E.2d 393 (1969).

This section was enacted to promote safe operation of motor vehicles on the highways. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Reckless driving and speed statutes are designed for the protection of life, limb and property. State v. Ward, 258 N.C. 330, 128 S.E.2d 673 (1962).

The obvious purpose of this section is to authorize specific speed limits and to establish a duty for all motorists to use due care in maintaining the speed of their vehicle. State v. Worthington, 89 N.C. App. 88, 365 S.E.2d 317 (1988).

This section has been scrutinized and studied by the legislature at every session of that body and has been amended, changed and altered constantly in keeping with changes in highway construction and public safety. State v. Bennor, 6 N.C. App. 188, 169 S.E.2d 393 (1969).

Scope of Protection. — This section does not limit its protection to motorists who are within the law; it enjoins all motorists to avoid causing injury to any person or property either on or off the highway, in compliance with legal requirements and the duty of all persons to use due care. McNair v. Goodwin, 264 N.C. 146, 141 S.E.2d 22 (1965).

This section states several offenses, each of which is a separate crime independently of the others. State v. Mills, 181 N.C. 530, 106 S.E. 677 (1921). See also, State v. Rountree, 181 N.C. 535, 106 S.E. 669 (1921).

Subsection (m) of this section must be construed consistent with the requirement of subsection (a) that no person shall drive at a speed greater than is reasonable and prudent under the circumstances. State v. Worthington, 89 N.C. App. 88, 365 S.E.2d 317 (1988).

Effect of Subsection (m). — Subsection (m) of this section imposes liability on a motorist only when his failure to reduce speed to avoid a collision is not in keeping with the duty to use due care under the circumstances. State v. Worthington, 89 N.C. App. 88, 365 S.E.2d 317 (1988).

Subsection (m) of this section does not impose liability except in cases where a reasonable and ordinarily prudent person could and would have decreased his speed to avoid a collision. State v. Worthington, 89 N.C. App. 88, 365 S.E.2d 317 (1988).

Rights of Motorist Are Relative. — A motorist operates his vehicle on the public highways where others are apt to be. His rights are relative. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Section Prescribes Lawful Speeds. — This section prescribes speeds at which motor vehicles may be lawfully operated on the highways of the State. Short v. Chapman, 261 N.C. 674, 136 S.E.2d 40 (1964).

This section establishes the maximum speed at which motor vehicles are permitted to travel lawfully on the highways of the State and in other places. Clark v. Jackson, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

Under this section 55 miles per hour is the general maximum speed limit in the State, and the provisions of former subdivision (b)(5) [now subsection (d)] are in the nature of an exception. A defendant must bring himself within the provisions of the exception in order to receive its benefits. State v. Brown, 250 N.C. 209, 108 S.E.2d 233 (1959); Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960).

Exemption of Police Officers Under § 20-145. — Section 20-145 exempts a police officer from observing the speed limit set out in this section when such officer is operating an automobile in the chase or apprehension of a violator of the law, or a person charged or suspected of such violation, as long as the officer drives with due regard to the safety of others. Goddard v. Williams, 251 N.C. 128, 110 S.E.2d 820 (1959), overruled in part, Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996).

The authority of the State Highway Commission (now Department of Transportation) under subdivision (d)(1) of this section does not stop at city limits, but extends to all State highways maintained by it, regardless of whether such highways are within the corporate limits of a city or town. Davis v. Jessup, 257 N.C. 215, 125 S.E.2d 440 (1962).

As to unenforceability of an ordinance in conflict with this section, see State v. Stallings, 189 N.C. 104, 126 S.E. 187 (1925).

As to application of section to criminal actions, see James v. City of Charlotte, 183 N.C. 630, 112 S.E. 423 (1922); Piner v. Richter, 202 N.C. 573, 163 S.E. 561 (1932).

Criminal Liability for Injury Where Speed Limit Exceeded. — Where one recklessly drives an automobile without signal or warning in excess of the speed limit fixed by ordinance and the general statute, and thereby injures or kills another at a street intersection of the town, his violation of the law in this manner makes him criminally liable for the injury, without regard to the exercise of his judgment at the time in endeavoring to avoid the injury or contributory negligence on the part of the one injured or killed. State v. McIver, 175 N.C. 761, 94 S.E. 682 (1917).

A reckless approach and traverse of an intersection may render one criminally liable for the consequences of his acts, in addition to liability under this section. State v. Gash, 177 N.C. 595, 99 S.E. 337 (1919).

When Violation Amounts to Manslaughter. — Where one drives his automobile in violation of the statutory requirements, and thus directly, or without an independent intervening sole proximate cause, the death of another results, he is guilty of manslaughter, though the death was unintentionally caused by his act. But the violation also is insufficient unless it was the proximate cause of the death, and a charge disregarding the element of proximate cause is error. State v. Whaley, 191 N.C. 387, 132 S.E. 6 (1926).

Warrant held sufficient to charge violation of this section by speeding 80 miles per hour. State v. Daughtry, 236 N.C. 316, 72 S.E.2d 658 (1952).

Conviction for Assault Held Not Sustainable. — Under an indictment of three counts (assault with a deadly weapon, namely an automobile, operating a motor vehicle on a public highway while under the influence of intoxicating liquor, and operating a motor vehicle recklessly and in breach of this section), wherein it was admitted by the State that there was no evidence of intentional assault, and where the jury returned for their verdict that defendant "was guilty of an assault, but not with reckless driving," the State's admission and the verdict on the last two counts dispelled the element of criminal negligence and criminal intent, and a conviction on the first count would not be sustained. State v. Rawlings, 191 N.C. 265, 131 S.E. 632 (1926). See also, State v. Rountree, 181 N.C. 535, 106 S.E. 669 (1921).

Where plaintiff alleged that defendant was operating his automobile at a speed which was excessive under the existing conditions in violation of subsection (a), but made no other allegation with reference to defendant's speed, and did not allege that the approach to the scene of the collision was either a business or a residential district or that the proper authorities had posted any signs giving notice of any determined speed limit for the area, subsection (a) and former subdivision (b)(4) [now subdivision (b)(2)] were pertinent in judging the conduct of the defendant. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

Applied in Gaffney v. Phelps, 207 N.C. 553, 178 S.E. 231 (1935) (speed in entering intersection); Hancock v. Wilson, 211 N.C. 129, 189 S.E. 631 (1937); Sparks v. Willis, 228 N.C. 25, 44 S.E.2d 343 (1947); State v. Blankenship, 229 N.C. 589, 50 S.E.2d 724 (1948); Bobbitt v. Haynes, 231 N.C. 373, 57 S.E.2d 361 (1950); Whiteman v. Seashore Transp. Co., 231 N.C. 701, 58 S.E.2d 752 (1950); Bumgardner v. Allison, 238 N.C. 621, 78 S.E.2d 752 (1953); McClamrock v. White Packing Co., 238 N.C. 648, 78 S.E.2d 749 (1953) (as to subsection (e)); Gantt v. Hobson, 240 N.C. 426, 82 S.E.2d 384 (1954) (as to subsection (h)); Combs v. United States, 122 F. Supp. 280 (E.D.N.C. 1954) (as to subsection (a)); Wilson v. Webster, 247 N.C. 393, 100 S.E.2d 829 (1957); Bass v. Lee, 255 N.C. 73, 120 S.E.2d 570 (1961); Powell v. Clark, 255 N.C. 707, 122 S.E.2d 706 (1961); Scarborough v. Ingram, 256 N.C. 87, 122 S.E.2d 798 (1961); Bulluck v. Long, 256 N.C. 577, 124 S.E.2d 716 (1962); Phillips v. Alston, 257 N.C. 255, 125 S.E.2d 580 (1962); Benson v. Sawyer, 257 N.C. 765, 127 S.E.2d 549 (1962); Parker v. Bruce, 258 N.C. 341, 128 S.E.2d 561 (1962); Queen v. Jarrett, 258 N.C. 405, 128 S.E.2d 894 (1963); State v. Wells, 259 N.C. 173, 130 S.E.2d 299 (1963); Scott v. Clark, 261 N.C. 102, 134 S.E.2d 181 (1964); Taney v. Brown, 262 N.C. 438, 137 S.E.2d 827 (1964); Hall v. Little, 262 N.C. 618, 138 S.E.2d 282 (1964); Carolina Coach Co. v. Cox, 337 F.2d 101 (4th Cir. 1964); Knight v. Seymour, 263 N.C. 790, 140 S.E.2d 410 (1965); Reeves v. Campbell, 264 N.C. 224, 141 S.E.2d 296 (1965); Drumwright v. Wood, 266 N.C. 198, 146 S.E.2d 1 (1966); Wells v. Bissette, 266 N.C. 774, 147 S.E.2d 210 (1966); Atwood v. Holland, 267 N.C. 722, 148 S.E.2d 851 (1966); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967); State v. Massey, 271 N.C. 555, 157 S.E.2d 150 (1967); State v. Moses, 272 N.C. 509, 158 S.E.2d 617 (1968); Pelkey v. Bynum, 2 N.C. App. 183, 162 S.E.2d 586 (1968); Kinney v. Goley, 6 N.C. App. 182, 169 S.E.2d 525 (1969); Racine v. Boege, 6 N.C. App. 341, 169 S.E.2d 913 (1969); State v. Zimmerman, 7 N.C. App. 522, 173 S.E.2d 35 (1970); Meeks v. Atkeson, 7 N.C. App. 631, 173 S.E.2d 509 (1970); Doggett v. Welborn, 18 N.C. App. 105, 196 S.E.2d 36 (1973); State v. Crabtree, 286 N.C. 541, 212 S.E.2d 103 (1975); McDougald v. Doughty, 27 N.C. App. 237, 218 S.E.2d 482 (1975); Farmer v. Chaney, 29 N.C. App. 544, 225 S.E.2d 159 (1976); State v. Gainey, 292 N.C. 627, 234 S.E.2d 610 (1977); State v. Spellman, 40 N.C. App. 591, 253 S.E.2d 320 (1979); Harris v. Bridges, 59 N.C. App. 195, 296 S.E.2d 299 (1982); Murdock v. Ratliff, 310 N.C. 652, 314 S.E.2d 518 (1984); State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992).

Cited in State v. Mickle, 194 N.C. 808, 140 S.E. 150 (1927); State v. Palmer, 197 N.C. 135, 147 S.E. 817 (1929); Burke v. Carolina Coach Co., 198 N.C. 8, 150 S.E. 636 (1929); Lancaster v. B. & H. Coast Line, 198 N.C. 107, 150 S.E. 716 (1929); Rudd v. Holmes, 198 N.C. 640, 152 S.E. 894 (1930); Pittman v. Downing, 209 N.C. 219, 183 S.E. 362 (1936); Taft v. Maryland Cas. Co., 211 N.C. 507, 191 S.E. 10 (1937); Pearson v. Luther, 212 N.C. 412, 193 S.E. 739 (1937); Reeves v. Staley, 220 N.C. 573, 18 S.E.2d 239 (1942); Brown v. Southern Paper Prods. Co., 222 N.C. 626, 24 S.E.2d 334 (1943); Crone v. Fisher, 223 N.C. 635, 27 S.E.2d 642 (1943); Hobbs v. Queen City Coach Co., 225 N.C. 323, 34 S.E.2d 211 (1945); State v. Sumner, 232 N.C. 386, 61 S.E.2d 84 (1950); Butler v. Allen, 233 N.C. 484, 64 S.E.2d 561 (1951); Matheny v. Central Motor Lines, 233 N.C. 673, 65 S.E.2d 361 (1951); Hansley v. Tilton, 234 N.C. 3, 65 S.E.2d 300 (1951); Adcox v. Austin, 235 N.C. 591, 70 S.E.2d 837 (1952); Pemberton v. Lewis, 235 N.C. 188, 69 S.E.2d 512 (1952); Childress v. Johnson Motor Lines, 235 N.C. 522, 70 S.E.2d 558 (1952); Jernigan v. Jernigan, 236 N.C. 430, 72 S.E.2d 912 (1952); Powell v. Daniel, 236 N.C. 489, 73 S.E.2d 143 (1952); Freshman v. Stallings, 128 F. Supp. 179 (E.D.N.C. 1955); Lowe v. Department of Motor Vehicles, 244 N.C. 353, 93 S.E.2d 448 (1956); Weaver v. C.W. Myers Trading Post, Inc., 245 N.C. 106, 95 S.E.2d 533 (1956); as to subsection (e), in Keener v. Beal, 246 N.C. 247, 98 S.E.2d 19 (1957); Hennis Freight Lines v. Burlington Mills Corp., 246 N.C. 143, 97 S.E.2d 850 (1957); Lookabill v. Regan, 247 N.C. 199, 100 S.E.2d 521 (1957); Durham v. McLean Trucking Co., 247 N.C. 204, 100 S.E.2d 348 (1957); Hollowell v. Archbell, 250 N.C. 716, 110 S.E.2d 262 (1959); Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960); Kennedy v. James, 252 N.C. 434, 113 S.E.2d 889 (1960); Pridgen v. Uzzell, 254 N.C. 292, 118 S.E.2d 755 (1961); Peeden v. Tait, 254 N.C. 489, 119 S.E.2d 450 (1961); Clifton v. Turner, 257 N.C. 92, 125 S.E.2d 339 (1962); Brewer v. Powers Trucking Co., 256

N.C. 175, 123 S.E.2d 608 (1962); Gilliam v. Propst Constr. Co., 256 N.C. 197, 123 S.E.2d 504 (1962); Dunlap v. Lee, 257 N.C. 447, 126 S.E.2d 62 (1962); Jewell Ridge Coal Corp. v. City of Charlotte, 204 F. Supp. 256 (W.D.N.C. 1962); Parlier v. Barnes, 260 N.C. 341, 132 S.E.2d 684 (1963); Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965); State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965); Cogdell v. Taylor, 264 N.C. 424, 142 S.E.2d 36 (1965); Wilkins v. Turlington, 266 N.C. 328, 145 S.E.2d 892 (1966); Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Barefoot v. Joyner, 270 N.C. 388, 154 S.E.2d 543 (1967); Kanoy v. Hinshaw, 273 N.C. 418, 160 S.E.2d 296 (1968); Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968); Swain v. Williamson, 4 N.C. App. 622, 167 S.E.2d 491 (1969); Brewer v. Harris, 279 N.C. 288, 182 S.E.2d 345 (1971); Southwire Co. v. Long Mfg. Co., 12 N.C. App. 335, 183 S.E.2d 253 (1971); McNair v. Boyette, 282 N.C. 230, 192 S.E.2d 457 (1972); Winters v. Burch, 284 N.C. 205, 200 S.E.2d 55 (1973); Wyatt v. Haywood, 22 N.C. App. 267, 206 S.E.2d 260 (1974); Caldwell v. Deese, 288 N.C. 375, 218 S.E.2d 379 (1975); State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976); Smith v. Garrett, 32 N.C. App. 108, 230 S.E.2d 775 (1977); Cockrell v. Cromartie Transp. Co., 295 N.C. 444, 245 S.E.2d 497 (1978); Holt v. City of Statesville, 35 N.C. App. 381, 241 S.E.2d 362 (1978); Woods v. Smith, 297 N.C. 363, 255 S.E.2d 174 (1979); Sink v. Sumrell, 41 N.C. App. 242, 254 S.E.2d 665 (1979); State v. Clements, 51 N.C. App. 113, 275 S.E.2d 222 (1981); State v. Flaherty, 55 N.C. App. 14, 284 S.E.2d 565 (1981); White v. Greer, 55 N.C. App. 450, 285 S.E.2d 848 (1982); State v. Hefler, 60 N.C. App. 466, 299 S.E.2d 456 (1983); State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221 (1983); State v. Hefler, 310 N.C. 135, 310 S.E.2d 310 (1984); State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984); State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985); State v. Braxton, 90 N.C. App. 204, 368 S.E.2d 56 (1988); Burgess v. Vestal, 99 N.C. App. 545, 393 S.E.2d 324 (1990); State v. Beasley, 104 N.C. App. 529, 410 S.E.2d 236 (1991); Body ex rel. Body v. Varner, 107 N.C. App. 219, 419 S.E.2d 208 (1992); Moreau v. Hill, 111 N.C. App. 679, 433 S.E.2d 10 (1993); Sparks v. Gilley Trucking Co., 992 F.2d 50 (4th Cir. 1993); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); Jones v. Rochelle, 125 N.C. App. 82, 479 S.E.2d 231 (1996); State v. Phillips, 127 N.C. App. 391, 489 S.E.2d 890 (1997); State v. McClendon, 130 N.C. App. 368, 502 S.E.2d 902 (1998); State v. McClendon, 350 N.C. 630, 517 S.E.2d 128 (1999); State v. Jones, 353 N.C. 159, 538 S.E.2d 917, 2000 N.C. LEXIS 894 (2000); Hawley v. Cash, 155 N.C. App. 580, 574 S.E.2d 684, 2002 N.C. App. LEXIS 1616 (2002); Williams v. Davis, 157 N.C. App. 696, 580 S.E.2d 85, 2003 N.C. App. LEXIS 936 (2003).

II. STANDARD OF CARE AND NEGLIGENCE.

This section prescribes a standard of care, and the standard fixed by the legislature is absolute. Aldridge v. Hasty, 240 N.C. 353, 82 S.E.2d 331 (1954); Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956); Lamm v. Gardner, 250 N.C. 540, 108 S.E.2d 847 (1959); Bondurant v. Mastin, 252 N.C. 190, 113 S.E.2d 292 (1960); Hutchens v. Southard, 254 N.C. 428, 119 S.E.2d 205 (1961); Pittman v. Swanson, 255 N.C. 681, 122 S.E.2d 814 (1961).

A driver must operate his vehicle at a reasonable rate of speed and keep a proper lookout for persons on or near the highway. Basden v. Sutton, 7 N.C. App. 6, 171 S.E.2d 77 (1969).

Duty of Motorist Generally. — A motorist must operate his vehicle at a reasonable rate of speed, keep a lookout for persons on or near the highway, decrease his speed when any special hazard exists with respect to pedestrians, and, if circumstances warrant, he must give warning of his approach by sounding his horn. Morris v. Minix, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

The duty of a driver to decrease his speed is governed by the duty of all persons to use "due care," and is tested by the usual legal requirements and standards such as proximate cause. Day v. Davis, 268 N.C. 643, 151 S.E.2d 556 (1966).

The speed limit prescribed by statute does not alone excuse those who drive within the limit specified by the statute, and it is likewise required that they use proper care where other conditions require it within the limitations given. State v. Whaley, 191 N.C. 387, 132 S.E. 6 (1926).

The fact that a vehicle is being driven within the statutory speed limit does not render the speed lawful when by reason of special hazards the speed is greater than is reasonable and prudent under the existing conditions. Rollison v. Hicks, 233 N.C. 99, 63 S.E.2d 190 (1951).

The fact that the speed of a vehicle is lower than that fixed by statute does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, or when a hazard exists with respect to weather or highway conditions, and his speed shall be reduced as may be necessary to avoid colliding with any vehicle on the highway. Keller v. Security Mills of Greensboro, Inc., 260 N.C. 571, 133 S.E.2d 222 (1963).

And a motorist may not lawfully drive at a speed which is not reasonable and prudent under the circumstances, notwithstanding that such speed is less than the limit set by this section. Kolman v. Silbert, 219 N.C. 134, 12 S.E.2d 915 (1941).

By provision of this section, speed in excess of that which is reasonable and prudent under the circumstances, when special hazards exist by reason of traffic, weather or highway conditions, is unlawful, notwithstanding that the speed may be less than the prima facie limits prescribed. Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946).

Speed in excess of that which is reasonable and prudent under the existing conditions is unlawful, notwithstanding that the speed may be less than the limits proscribed by statute. State v. Grissom, 17 N.C. App. 374, 194 S.E.2d 227, cert. denied, 283 N.C. 258, 195 S.E.2d 691 (1973).

The speed of a motor vehicle may be unlawful under the circumstances of a particular case, even though such speed is less than the definite statutory limit prescribed for the vehicle in the place where it is being driven. Sowers v. Marley, 235 N.C. 607, 70 S.E.2d 670 (1952); Wise v. Lodge, 247 N.C. 250, 100 S.E.2d 677 (1957); Lamm v. Gardner, 250 N.C. 540, 108 S.E.2d 847 (1959).

It is unlawful to drive at any time on a State highway at a speed greater than is reasonable and prudent under the conditions then existing. State v. Norris, 242 N.C. 47, 86 S.E.2d 916 (1955).

Violation of the standard of care required by subsection (h) of this section is negligence per se. Murdock v. Ratliff, 63 N.C. App. 306, 305 S.E.2d 48 (1983), rev'd on other grounds, 310 N.C. 652, 314 S.E.2d 518 (1984).

Subsections (g) and (m) of this section, construed together, establish a duty to drive with caution and circumspection and to reduce speed if necessary to avoid a collision, irrespective of the lawful speed limit or the speed actually driven. State v. Stroud, 78 N.C. App. 599, 337 S.E.2d 873 (1985).

This section requires the motorist to decrease his speed when special hazards exist by reason of weather and highway conditions, to the end that others using the highway may not be injured. Williams v. Tucker, 259 N.C. 214, 130 S.E.2d 306 (1963); Sessoms v. Roberson, 47 N.C. App. 573, 268 S.E.2d 24 (1980).

A speed greater than is reasonable and prudent under the conditions then existing is prohibited by this section, and the duty is imposed upon the driver to decrease the speed of his automobile when special hazard exists with respect to pedestrians or other traffic. Baker v. Perrott, 228 N.C. 558, 46 S.E.2d 461 (1948). See Williams v. Henderson, 230 N.C. 707, 55 S.E.2d 462 (1949); Riggs v. Akers Motor Lines, 233 N.C. 160, 63 S.E.2d 197 (1951); Price v. Miller, 271 N.C. 690, 157 S.E.2d 347 (1967).

The driver of an automobile is required at all times to operate his vehicle with due regard to traffic and conditions of the highway and to keep his car under control and decrease his speed when special hazards exist by reason of weather or highway conditions or when necessary to avoid colliding with any other vehicle. This requirement, as expressed in this section and G.S. 20-140, constitutes the hub of the motor vehicle law around which other provisions regulating the operation of motor vehicles revolve. Cox v. Lee, 230 N.C. 155, 52 S.E.2d 355 (1949); Singletary v. Nixon, 239 N.C. 634, 80 S.E.2d 676 (1954); Lamm v. Gardner, 250 N.C. 540, 108 S.E.2d 847 (1959).

Duty to Refrain from Entering Highway or to Stop in Extreme Cases. — In extreme cases where by reason of fog or other conditions visibility is practically nonexistent, motorists are under a duty to refrain from entering the highway or to stop if already on the highway. Williams v. Tucker, 259 N.C. 214, 130 S.E.2d 306 (1963).

Whether a Given Speed Is Lawful Depends on Circumstances. — In light of the provisions of G.S. 20-140 and this section, it is clear that whether or not a speed of 55 miles an hour is lawful depends upon the circumstances at the time. These sections provide that a motorist must at all times drive with due caution and circumspection and at a speed and in a manner so as not to endanger or be likely to endanger any person or property. At no time may a motorist lawfully drive at a speed greater than is reasonable and prudent under the conditions then existing. Primm v. King, 249 N.C. 228, 106 S.E.2d 223 (1958).

Driving below the speed limit is not a defense to a charge of driving at a speed greater than is reasonable and prudent under existing conditions; regardless of the posted speed limit, motorists have a duty to decrease speed if necessary to avoid a collision. State v. Stroud, 78 N.C. App. 599, 337 S.E.2d 873 (1985).

Speed Less than 20 Miles Per Hour May Be Unlawful. — Speed less than 20 miles per hour in a business district, residential district or elsewhere, if greater than is reasonable and prudent under the conditions then existing, is unlawful and negligence per se. Hinson v. Dawson, 241 N.C. 714, 86 S.E.2d 585 (1955).

As May Speed of 35 or 40 mph on Snowy Highway. — Speed of 40 miles per hour on a highway on which snow is beginning to stick may be excessive. Fox v. Hollar, 257 N.C. 65, 125 S.E.2d 334 (1962).

Speed of 35 to 40 miles per hour on a highway covered with ice and snow may be excessive; the driver of the vehicle under such conditions must exercise care commensurate with the danger so as to keep his vehicle under control.

Redden v. Bynum, 256 N.C. 351, 123 S.E.2d 734 (1962).

Character of District Must Be Proved Before Speed Limit Can Be Determined. — In the absence of a stipulation, it is necessary to prove the character of the district before the maximum speed permitted by law can be determined. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

What is the speed limit is a mixed question of fact and law, except where the State Highway Commission (now the Board of Transportation) or local authorities, pursuant to the statute, have determined a reasonable and safe speed for a particular area and have declared it by erecting appropriate signs. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

Reasonableness of Speed Is Question for Jury. — It is ultimately for the jury, not for a witness, to determine what speed under subsection (a) of this section would have been "reasonable and prudent under the conditions" which existed at the time and place of a collision. Peterson v. Taylor, 10 N.C. App. 297, 178 S.E.2d 227 (1971).

Whether plaintiff's speed was unreasonably slow and whether traffic was impeded are questions of fact for jury. Page v. Tao, 56 N.C. App. 488, 289 S.E.2d 910, aff'd, 306 N.C. 739, 295 S.E.2d 470 (1982).

Where the evidence tended to show that plaintiff or defendant was traveling at a slow speed, a jury question was presented as to whether under the circumstances the speed was so slow as to impede reasonable movement of traffic, and whether there was justification for the slow speed. Fonville v. Dixon, 16 N.C. App. 664, 193 S.E.2d 406 (1972), cert. denied, 282 N.C. 672, 194 S.E.2d 152 (1973).

When road's condition is such that skidding may be reasonably anticipated, driver must exercise care commensurate with the danger to keep his vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. Webb v. Clark, 264 N.C. 474, 141 S.E.2d 880 (1965); Clark v. Jackson, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

But the skidding of an automobile is not in itself, and without more, evidence of negligence. Bass v. McLamb, 268 N.C. 395, 150 S.E.2d 856 (1966).

The mere skidding of a motor vehicle is not evidence of, and does not imply, negligence. Clark v. Jackson, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

Skidding may be evidence of negligence, if it was caused by failure to exercise reasonable precaution to avoid it, when the conditions at the time made such a result probable in the absence of such precaution. Clark v. Jackson, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

The motorist upon a public highway on a dark, misty and foggy night is required to regulate the speed of his car with a view to his own safety according to the distance the light from his headlights is thrown in front of him upon the highway, and to observe the rule of the ordinary prudent man. Weston v. Southern Ry., 194 N.C. 210, 139 S.E. 237 (1927). See also, Stewart v. Stewart, 221 N.C. 147, 19 S.E.2d 242 (1942).

Curves and darkness are conditions a motorist is required to take into consideration in regulating his speed as may be necessary to avoid colliding with any person, vehicle, or other conveyance. Allen v. Dr. Pepper Bottling Co., 223 N.C. 118, 25 S.E.2d 388 (1943). See also, Tyson v. Ford, 228 N.C. 778, 47 S.E.2d 251 (1948).

But the duty of the nocturnal motorist does not extend so far as to require that he must be able to bring his automobile to an immediate stop on the sudden arising of a dangerous situation which he could not reasonably have anticipated. Rouse v. Peterson, 261 N.C. 600, 135 S.E.2d 549 (1964).

Inability to Stop Within Radius of Lights Is Not Negligence or Contributory Negligence Per Se. — When a motorist is traveling within the maximum speed limit, his inability to stop his vehicle within the radius of his headlights will not be held negligence or contributory negligence per se. Short v. Chapman, 261 N.C. 674, 136 S.E.2d 40 (1964).

If the driver of a motor vehicle who is operating it within the maximum speed limits prescribed by this section fails to stop such vehicle within the radius of the lights of the vehicle or within the range of his vision, the courts may no longer hold such failure to be negligence per se, or contributory negligence per se, as the case may be, that is, negligence or contributory negligence, in and of itself; but the facts relating thereto may be considered by the jury, with other facts in such action, in determining whether the operator be guilty of negligence, or contributory negligence, as the case may be. Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1963); Coleman v. Burris, 265 N.C. 404, 144 S.E.2d 241 (1965); Bass v. McLamb, 268 N.C. 395, 150 S.E.2d 856 (1966); Duke v. Tankard, 3 N.C. App. 563, 165 S.E.2d 524 (1969).

If a motorist is traveling within the legal speed limit, his inability to stop within the range of his headlights is not negligence per se, but is only evidence of negligence to be considered with the other evidence in the case. May v. Southern Ry., 259 N.C. 43, 129 S.E.2d 624 (1963).

Nor Is Inability to Stop Within Range of Vision. — Plaintiff's inability to stop within the range of his vision was held not to be contributory negligence per se, but the facts relating thereto were held for consideration by the jury in determining the issue of contributory negligence. Brown v. Hale, 263 N.C. 176, 139 S.E.2d 210 (1964).

No universal absolute rule may be applied to the question of whether a motorist is contributorily negligent as a matter of law by proceeding when his or her vision becomes obscured by conditions on the highway; the conduct of each motorist must be evaluated in the light of the unique factors and circumstances with which he or she is confronted. Only in the clearest cases should a failure to stop completely be held to be negligence as a matter of law. Allen v. Pullen, 82 N.C. App. 61, 345 S.E.2d 469 (1986), cert. denied, 318 N.C. 691, 351 S.E.2d 738 (1987).

Defendant's failure to stop her vehicle within the range of her vision when confronted by a cloud of dust was not contributory negligence per se, and under the circumstances, where her vision was suddenly obscured, the question of her speed was properly one for the jury. Allen v. Pullen, 82 N.C. App. 61, 345 S.E.2d 469 (1986), cert. denied, 318 N.C. 691, 351 S.E.2d 738 (1987).

And an Instruction to the Contrary Constitutes Prejudicial Error. — The court committed prejudicial error in instructing the jury to the effect that failure or inability of defendant, who was driving the automobile within the maximum speed limit on the highway, to stop the automobile within the radius of his lights would constitute a breach of legal duty and would be negligence per se. Salter v. Lovick, 257 N.C. 619, 127 S.E.2d 273 (1962).

Collision with Vehicle Parked on Highway at Night Without Lights. — Plaintiff would not be held contributorily negligent as a matter of law in striking the rear of a vehicle left unattended on a highway at nighttime without lights, when plaintiff at the time was traveling within the statutory maximum speed limit. Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1953).

Allegations held not to show contributory negligence as a matter of law in colliding with truck stopped on highway after dark without rear lights. Weavil v. Myers, 243 N.C. 386, 90 S.E.2d 733 (1956).

Where a motorist is traveling within the maximum legal speed, he will not be held contributorily negligent as a matter of law in colliding with the rear of a vehicle left in his lane of traffic at nighttime without lights. Dezern v. Asheboro City Bd. of Educ., 260 N.C. 535, 133 S.E.2d 204 (1963).

Motorist who is driving his automobile within the maximum speed limit cannot be held contributorily negligent as a matter of law in outrunning his headlights and striking the rear end of a pickup truck stopped on the highway without lights. Rouse v. Peterson, 261 N.C. 600, 135 S.E.2d 549 (1964); Sharpe v. Hanline, 265 N.C. 502, 144 S.E.2d 574 (1965).

A motorist is not required to anticipate that an automobile will be stopped on the highway ahead of him at night, without lights or warning signals required by statute, but this does not relieve him of the duty of exercising reasonable care for his own safety, of keeping a proper lookout, and proceeding as a reasonably prudent person would under the circumstances to avoid a collision with the rear of a vehicle stopped or standing on the road. Bass v. McLamb, 268 N.C. 395, 150 S.E.2d 856 (1966).

Speed When Person or Vehicle Is in Driver's Line of Travel. — Any speed may be unlawful and excessive if the operator of a motor vehicle knows or by the exercise of due care should reasonably anticipate that a person or vehicle is standing in his line of travel. Murray v. Wyatt, 245 N.C. 123, 95 S.E.2d 541 (1956).

Any speed may be unlawful if the driver of a motor vehicle sees, or in the exercise of due care could and should have seen, a person or vehicle in his line of travel. Cassetta v. Compton, 256 N.C. 71, 123 S.E.2d 222 (1961).

The law requires more than ordinary care in regard to children. Moore v. Powell, 205 N.C. 636, 172 S.E. 327 (1934).

As to passing animals, see Tudor v. Bowen, 152 N.C. 441, 67 S.E. 1015 (1910); Gaskins v. Hancock, 156 N.C. 56, 72 S.E. 80 (1911); Curry v. Fleer, 157 N.C. 16, 72 S.E. 626 (1911).

As to care required of motorists at intersections under former subsection (c) of this section, which expressly required drivers to decrease speed on approaching and crossing an intersection as necessary to avoid collisions, etc., see Hutchens v. Southard, 254 N.C. 428, 119 S.E.2d 205 (1961); Rogers v. Rogers, 2 N.C. App. 668, 163 S.E.2d 645 (1968); Murrell v. Jennings, 15 N.C. App. 658, 190 S.E.2d 686 (1972).

Driver Has No Duty to Anticipate Violation of Law by Another. — The operator of an automobile traveling upon an intersecting highway traversing a designated main-traveled or through highway is under no duty to anticipate that the operator of an automobile upon such designated highway, approaching the intersection of the two highways, will fail to observe the speed regulations and the rules of the road. Hawes v. Atlantic Ref. Co., 236 N.C. 643, 74 S.E.2d 17 (1953).

But Must Exercise Due Care to Avoid Consequences of Another's Negligence. — The driver of an automobile upon a through highway did not have the right to assume absolutely that a driver approaching the intersection along a servient highway would obey the stop sign before entering or crossing the through highway, but was required to keep a proper lookout and to keep his car at a reasonable speed under the circumstances in order to avoid injury to life or limb, and the driver of the car along the through highway forfeited his right to rely upon the assumption that the other driver would stop before entering or crossing the intersection when he approached and attempted traverse it himself at an unlawful or excessive speed. Even when his speed was lawful he remained under duty to exercise due care to ascertain if the driver of the other car was going to violate the statutory requirement in order to avoid the consequences of such negligence. Groome v. Davis, 215 N.C. 510, 2 S.E.2d 771 (1939).

Violation of Section Is Negligence Per Se — In General. — Operation of a motor vehicle in excess of the applicable limits set forth in this section is negligence per se. Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

It is negligence per se to drive an automobile upon a public highway at a speed greater than that permitted by statute. Albritton v. Hill, 190 N.C. 429, 130 S.E. 5 (1925). See also Norfleet v. Hall, 204 N.C. 573, 169 S.E. 143 (1933); James v. Carolina Coach Co., 207 N.C. 742, 178 S.E. 607 (1935); Exum v. Baumrind, 210 N.C. 650, 188 S.E. 200 (1936); Jones v. Horton, 264 N.C. 549, 142 S.E.2d 351 (1965); Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965).

One who fails to comply with the provisions of this section is negligent. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Violation of this section constitutes negligence, because according to the uniform decisions of the Supreme Court, the violation of a statute imposing a rule of conduct in the operation of a motor vehicle and enacted in the interest of safety has been held to constitute negligence per se, unless otherwise provided in the statute. Bridges v. Jackson, 255 N.C. 333, 121 S.E.2d 542 (1961).

Same — Subsection (a). — Tarrant v. Pepsi-Cola Bottling Co., 221 N.C. 390, 20 S.E.2d 565 (1942); Black v. Gurley Milling Co., 257 N.C. 730, 127 S.E.2d 515 (1962); Rundle v. Grubb Motor Lines, 300 F.2d 333 (4th Cir. 1962); Page v. Tao, 56 N.C. App. 488, 289 S.E.2d 910, aff'd, 306 N.C. 739, 295 S.E.2d 470 (1982).

Same — Former Subdivision (b)(3). — Smart v. Fox, 268 N.C. 284, 150 S.E.2d 403 (1966).

Same — Former Subdivision (b)(4). — Stegall v. Sledge, 247 N.C. 718, 102 S.E.2d 115 (1958); Rudd v. Stewart, 255 N.C. 90, 120 S.E.2d 601 (1961); Price v. Miller, 271 N.C. 690, 157 S.E.2d 347 (1967); Basden v. Sutton, 7 N.C. App. 6, 171 S.E.2d 77 (1969).

Same — Former Subsection (c). — Hutchens v. Southard, 254 N.C. 428, 119 S.E.2d 205 (1961); Pittman v. Swanson, 255 N.C. 681, 122 S.E.2d 814 (1961); Redden v. Bynum, 256 N.C. 351, 123 S.E.2d 734 (1962); Rundle v. Grubb Motor Lines, 300 F.2d 333 (4th Cir. 1962).

Driving at a Speed Greater Than Is Reasonable and Prudent Is Negligence. — If a person drives a vehicle on a highway at a speed greater than is reasonable and prudent under conditions then existing, such person is guilty of negligence per se, that is, as a matter of law, notwithstanding the fact that the speed does not exceed the applicable maximum limits set forth in subsection (b) of this section. Cassetta v. Compton, 256 N.C. 71, 123 S.E.2d 222 (1961); Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

It is unlawful for a person to operate a vehicle upon a public highway at a speed that is greater than is reasonable and prudent under existing circumstances. One who violates this statute is guilty of negligence. Rouse v. Jones, 254 N.C. 575, 119 S.E.2d 628 (1961).

If one drives an automobile at a speed greater than 55 miles per hour, or faster than is reasonable and prudent under existing conditions, he is negligent. Rector v. Roberts, 264 N.C. 324, 141 S.E.2d 482 (1965).

Operation at a speed in excess of that lawfully prescribed is a negligent act. Krider v. Martello, 252 N.C. 474, 113 S.E.2d 924 (1960).

A motorist is required to act as a reasonably prudent man and to drive with due caution and circumspection and at a speed or in a manner so as not to endanger or be likely to endanger any person or property, and his failure to do so is negligence. Crotts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957).

To Be Actionable Negligence Must Be Proximate Cause of Injury. — A violation of this section constitutes negligence, although such negligence is not actionable unless it is the proximate cause of the injuries complained of. Davis v. Imes, 13 N.C. App. 521, 186 S.E.2d 641 (1972).

While violation of former subsection (c) constituted negligence per se, in order for there to be actionable negligence, such violation had to have been a proximate cause of the injury in suit, including the essential element of foreseeability. Day v. Davis, 268 N.C. 643, 151 S.E.2d 556 (1966).

If the negligence resulting from failure to comply with the provisions of this section proximately causes injury, liability results. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

And violation of this section has legal significance in a civil action only if it proximately causes injury. Cassetta v. Compton, 256 N.C. 71, 123 S.E.2d 222 (1961).

Burden of Showing Proximate Cause. — Plaintiff in a civil action has the burden of showing that excessive speed, when relied upon by him, was a proximate cause of injury. Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946).

Evidence of Excessive Speed Is Not Prima Facie Evidence of Proximate Cause. — Speed in excess of 21 miles per hour in a business district is prima facie evidence that the speed is excessive and unlawful, but such evidence is not prima facie proof of proximate cause; it is merely evidence to be considered with other evidence in determining actionable negligence. Templeton v. Kelley, 215 N.C. 577, 2 S.E.2d 696 (1939).

The mere fact that it can be reasonably inferred from the evidence that an automobile was traveling at a very rapid speed when it wrecked is not sufficient to permit a jury to find that such speed caused its wreck, and that its driver was guilty of actionable negligence. Crisp v. Medlin, 264 N.C. 314, 141 S.E.2d 609 (1965).

Question of Proximate Cause for the Jury. — Whether a violation of the provisions of this section was the proximate cause of an injury is for the jury to determine. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

Evidence Held Sufficient to Show Actionable Negligence. — Evidence of greatly excessive speed in violation of the speed restrictions of this section, and of reckless driving in violation of G.S. 20-140, was sufficient to make out a case of actionable negligence. Bell v. Maxwell, 246 N.C. 257, 98 S.E.2d 33 (1957); Hutchens v. Southard, 254 N.C. 428, 119 S.E.2d 205 (1961).

All the evidence tended to show that plaintiff's decedent was killed by the actionable negligence of the driver of the automobile in which he was a passenger when the automobile was driven at an excessive speed in violation of this section and in a reckless manner in violation of G.S. 20-140. Bridges v. Graham, 246 N.C. 371, 98 S.E.2d 492 (1957).

Where there was evidence that defendant was driving his automobile on the highway at a speed of 65 miles per hour and that the injury in suit was proximately caused by such excessive speed, it was sufficient to be submitted to the jury on the issue of actionable negligence. Norfleet v. Hall, 204 N.C. 573, 169 S.E. 143 (1933).

As to evidence establishing negligence per se but not wanton negligence, see Turner v. Lipe, 210 N.C. 627, 188 S.E. 108 (1936). See also, Smart v. Rodgers, 217 N.C. 560, 8 S.E.2d 833 (1940).

Effect of Violation by Plaintiff upon Recovery from Railroad. — The mere fact that the speed of an automobile exceeded that allowed by law at the time of its collision with a railroad train at a public crossing does not of itself prevent a recovery by the owner where there is evidence of negligence on the part of the railroad, because it would, among other things, withdraw the question of proximate cause from the jury. Shepard v. Norfolk S.R.R., 169 N.C. 239, 84 S.E. 277 (1915).

III. EVIDENCE.

Mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed or was following too closely. Huggins v. Kye, 10 N.C. App. 221, 178 S.E.2d 127 (1970).

The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. Powell v. Cross, 263 N.C. 764, 140 S.E.2d 393 (1965).

The physical facts at the scene of an accident may disclose that the operator of the vehicle was travelling at excessive speed. Keller v. Security Mills of Greensboro, Inc., 260 N.C. 571, 133 S.E.2d 222 (1963).

Testimony of Witness as to Speed Limit in Particular Area Violates Opinion Rule. — To permit a witness to say what a speed limit was for a particular area at a given time is to allow him to give his inferences from facts which he has observed. Such testimony violates the opinion rule and invades the province of the jury. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

But Witness May Testify as to Presence of Highway Sign. — If a highway sign declaring the speed limit to be a given speed has been posted, it would be competent for a witness to say so, describe the sign, and testify as to its location. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

And Inference Is that Highway Sign Was Erected by Proper Authorities. — When a sign is present, nothing else appearing, there is a logical inference that it was erected by the proper authorities pursuant to this section. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

Competency of Opinion Testimony as to Speed of Vehicle. — It is the rule in this State that any person of ordinary intelligence who has had a reasonable opportunity to observe is competent to testify as to the rate of speed of an automobile. Jones v. Horton, 264 N.C. 549, 142 S.E.2d 351 (1965).

Judging Speed by Movement of Lights. — At night, a witness may judge the speed of an automobile by the movement of its lights, if his observation is for such a distance as to enable him to form an intelligent opinion. Jones v. Horton, 264 N.C. 549, 142 S.E.2d 351 (1965).

Submission of Circumstantial Evidence. — Though the evidence on the part of plaintiff is not direct, but circumstantial, yet it may be sufficient evidence to be submitted to the jury that defendant was exceeding the speed limit contrary to this section. Jones v. Bagwell, 207 N.C. 378, 177 S.E. 170 (1934).

Evidence was insufficient to be submitted to jury on the question of maximum speed limit for business district where it did not bring the locale of the collision within the statutory definition of such district. Tillman v. Bellamy, 242 N.C. 201, 87 S.E.2d 253 (1955).

As to evidence showing excessive speed, see State v. Goins, 233 N.C. 460, 64 S.E.2d 289 (1951).

Evidence Tending to Show Speed Greater Than Was Reasonable and Prudent. — Evidence tending to show that the driver of a truck was traveling 35 to 40 miles per hour in an early morning fog which limited visibility to 100 or 125 feet, that he had overtaken a vehicle traveling in the same direction and was attempting to pass such vehicle 250 or 300 feet before reaching a curve, and that he collided with plaintiff's car which approached from the opposite direction, was held sufficient to be submitted to the jury on the issue of the negligence of the driver of the truck. Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949).

Evidence Negativing Excessive Speed. — In the light of admitted facts as to the length of marks on the shoulder of highway and the point at which truck came to rest, suggestion of a speed of 45 miles per hour as the truck was leaving the highway and going on the shoulder was contrary to human experience. Tysinger v. Coble Dairy Prods., 225 N.C. 717, 36 S.E.2d 246 (1945).

Sufficient Evidence to Overrule Defendant's Motion Held for Nonsuit. — Evidence that defendant was driving his car at a speed of 50 to 55 miles per hour, on or near the center of the highway, when he collided with another car, resulting in the death of the driver thereof, was held sufficient to overrule defendant's motion for nonsuit in a prosecution for manslaughter, although defendant introduced evidence in sharp conflict. State v. Webber, 210 N.C. 137, 185 S.E. 659 (1936).

The State's evidence tending to show that defendant was driving some 80 to 90 miles per hour over a highway whereon several other vehicles were moving at the time was sufficient to overrule defendant's motion for nonsuit and to sustain a conviction of reckless driving under G.S. 20-140 and of driving at a speed in excess of 55 miles per hour in violation of this section. State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

Evidence that defendant failed to yield the right-of-way to plaintiff, who was on the right, and that defendant was driving at 50 miles per hour through intersection, raised the issue of defendant's negligence, and motion for nonsuit at the close of all the evidence was properly denied. Price v. Gray, 246 N.C. 162, 97 S.E.2d 844 (1957).

Evidence Held Sufficient for Submission to Jury. — Evidence was sufficient to show violation of this section, and to warrant submission to the jury of the issue of defendants' negligence. Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949); Brafford v. Cook, 232 N.C. 699, 62 S.E.2d 327 (1950).

Evidence was sufficient to be submitted to the jury on the question of the negligence of a driver in traveling at excessive speed and in failing to maintain a proper lookout and in failing to keep his car under proper control. Blalock v. Hart, 239 N.C. 475, 80 S.E.2d 373 (1954).

Mute evidence of extensive damage to front end of defendant's car, of blood spots on car and of car coming to rest 365 feet from where other blood spots began, tended to show that defendant had not slackened his speed of 75 to 80 miles per hour up to the moment of striking deceased, and that he was violating this section. State v. Phelps, 242 N.C. 540, 89 S.E.2d 132 (1955).

Evidence that a child less than five years old was on the hard surface of a highway, unattended and clearly visible to defendant while he traveled a distance of one-half mile, that the child ran across the highway toward her companion, another small child, when defendant was only some 40 feet away, and that defendant could not then avoid striking the child, notwithstanding he had reduced his speed from some 45 miles per hour to 25 miles per hour, was sufficient to be submitted to the jury. Henderson v. Locklear, 260 N.C. 582, 133 S.E.2d 164 (1963).

For case holding evidence sufficient to show a violation of subsection (a), see Register v. Gibbs, 233 N.C. 456, 64 S.E.2d 280 (1951).

For case holding evidence sufficient to show that defendant was guilty of negligence in not decreasing speed when approaching and entering an intersection at a speed of 60 to 70 miles an hour in violation of former subsection (c) of this section, see Stockwell v. Brown, 254 N.C. 662, 119 S.E.2d 795 (1961).

For case holding that driver was driving at a speed greater than was reasonable and prudent under the conditions existing, see Cronenberg v. United States, 123 F. Supp. 693 (E.D.N.C. 1954).

Evidence that defendant, while operating an automobile under hazardous conditions, perceived an automobile in her lane of travel, but that despite "slamming on" her brakes she was unable to maintain control of her automobile and slid into the rear end of the automobile in front of her was sufficient to submit the issue for determination by the jury. Masciulli v. Tucker, 82 N.C. App. 200, 346 S.E.2d 305 (1986).

IV. INSTRUCTIONS.

Necessity of Instructing on Conduct Constituting Negligence Per Se. — Where there is evidence from which the jury could draw a reasonable inference that the defendant was driving at a speed in excess of the statutory limit, the court must instruct the jury, without special request therefor, that if it finds from the evidence that defendant was operating his motor vehicle in excess of the speed limit such conduct would constitute negligence per se. A failure to so instruct the jury is prejudicial error which requires reversal and a new trial. Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

Failure to Instruct on Negligence Per Se Held Not Prejudicial Error. — Although it is technically true that violation of this section's "reasonable and prudent" standard is negligence per se, the trial judge did not commit prejudicial error in instructing the jury that violation of the statute was negligence; the practical effect of an instruction on negligence and negligence per se in regard to this section would have been identical, and in either case, the jury would be required to determine what was "reasonable and prudent" under the circumstances. Hinnant v. Holland, 92 N.C. App. 142, 374 S.E.2d 152 (1988), cert. denied, 324 N.C. 335, 378 S.E.2d 792 (1989).

For case holding that instruction failing to charge provisions of this section in a civil action was error, see Barnes v. Teer, 219 N.C. 823, 15 S.E.2d 379 (1941).

Instruction on Duty Not to Drive at Speed Greater Than Reasonable. — Trial judge did not err in refusing to instruct the jury on decedent's duty not to drive at a speed greater than was reasonable and prudent under the conditions existing at the time of the accident; configuration of stop lights, fast-food mart, and police vehicles in bank parking lot did not "heighten" decedent's duty under subsection (a) of this section and did not require judge to submit defendant's requested instruction notwithstanding the absence of any evidence about decedent's rate of speed, where, further, none of the evidence indicated that decedent saw, or should have seen, defendant turn in front of her in time for her to slow down or to sound her horn. Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

Trial court's refusal to instruct jury on decedent's duty not to drive at a speed greater than was reasonable and prudent under the conditions existing at the time of accident was not error; excessive speed is not inferred from vehicular damage. Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

Although a trial judge instructed the jury that every person was under a duty to follow standards of conduct established by a safety statute and that a person's failure to do so was negligence in and of itself, the only specific safety statute on which he then charged the jury was G.S. 20-141(a), to the effect that no person should drive a vehicle at a speed greater than was reasonable under the conditions then existing; this instruction was insufficient to act as substitute for a charge that defendant violated G.S. 20-146 because the jury was limited to finding negligence on the basis of defendant's violation of a safety statute if it found that he was driving his vehicle at a speed greater than was reasonable and prudent at the time instead of permitting the jury to consider, alternatively, that defendant was negligent because of actions that caused his vehicle to cross the center line and collide with plaintiff's car in plaintiff's lane of travel. Sobczak v. Vorholt, 181 N.C. App. 629, 640 S.E.2d 805, 2007 N.C. App. LEXIS 403 (2007).

Instruction of doctrine of sudden emergency held error under the evidence. Masciulli v. Tucker, 82 N.C. App. 200, 346 S.E.2d 305 (1986).

Instruction as to Special Hazards Held Without Error. — The trial court's instruction correctly defining "residential district" and charging that the lawful speed therein was 25 miles an hour, but that this limitation did not relieve the driver from further reducing his speed if made necessary by special hazards in order to avoid colliding with any person or vehicle, was without error. Reid v. City Coach Co., 215 N.C. 469, 2 S.E.2d 578, 123 A.L.R. 140 (1939).

Instruction on Duty to Decrease Speed. — The trial judge committed reversible error in refusing to instruct the jury regarding the duty to decrease speed under subsection (m). Hinnant v. Holland, 92 N.C. App. 142, 374 S.E.2d 152 (1988), cert. denied, 324 N.C. 335, 378 S.E.2d 792 (1989).

Judge was not required to instruct the jury about decedent's duty to decrease her speed to the extent necessary to avoid a collision, where nothing in the record indicated that decedent had the opportunity to slow down when defendant entered her path of travel, and where there was no evidence that decedent saw, or should have seen, defendant in time to react to his presence. Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

The trial court erred by refusing to instruct the jury that defendant had a duty to decrease her speed. Welling v. Walker, 117 N.C. App. 445, 451 S.E.2d 329 (1994), cert. dismissed as improvidently granted, 342 N.C. 411, 464 S.E.2d 43 (1995).

As to instruction regarding duty of motorist operating a vehicle with worn, slick tires on a wet and slippery highway, see First Union Nat'l Bank v. Hackney, 270 N.C. 437, 154 S.E.2d 512 (1967).

As to instructions under former subsection (c), see Kolman v. Silbert, 219 N.C. 134, 12 S.E.2d 915 (1941); Garvey v. Atlantic Greyhound Corp., 228 N.C. 166, 45 S.E.2d 58 (1947); Medlin v. Spurrier & Co., 239 N.C. 48, 79

S.E.2d 209 (1953); Pittman v. Swanson, 255 N.C. 681, 122 S.E.2d 814 (1961).

As to requirements of charge under former § 1-180, see Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948); State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

OPINIONS OF ATTORNEY GENERAL

Subsection (e) of this section specifically authorizes the municipal corporation to set a speed limit of less than 35 miles per hour on streets within the municipality which are not part of the State highway system. See opinion of Attorney General to Mr. Robert M. Bennett, City Engineer, City of Fayetteville, 54 N.C.A.G. 65 (1985).

Effect of Subsection (m). — Subsection (m) of this section creates a criminal offense of failure to decrease speed as necessary to avoid a collision as well as a "standard of care" in establishing civil negligence. See opinion of Attorney General to Ms. Mary Claire McNaught, Public Safety Attorney, Winston-Salem, N.C., 48 N.C.A.G. 138 (1979).

A Municipal Ordinance Limiting Speed on Nonsystem Streets Is Ineffective Without Signs. — See opinion of Attorney General to Mr. James B. Garland, Assistant Gastonia City Attorney, 41 N.C.A.G. 167 (1970).

Reduction of Speed Limits on State Highways in School Zones Within Municipalities. — Section 20-141.1 must be construed together with this section, G.S. 20-169, and other statutes, and when so construed, the provision for concurring ordinances in this section when reducing speed limits on state highways in school zones within municipalities must be given effect and must be complied with. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

A municipal ordinance adopted pursuant to G.S. 20-141.1 reducing the speed in a school zone on a State Highway System street is not effective without a concurring ordinance by the Department of Transportation as provided for by subsection (f) of this section. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

Operating military tactical vehicles at slow speeds does not violate the North Carolina Motor Vehicle Code. See opinion of Attorney General to Colonel Kenneth C. Sallenger, Command Logistics Officer, North Carolina National Guard, 1999 N.C.A.G. 4 (1/21/99).

§ 20-141.1. Speed limits in school zones.

The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by erecting signs giving notice of the school zone, the authorized speed limit and which indicate the days and hours the lower limit is effective by an electronic flasher operated with a time clock. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this section. A person who drives a motor vehicle in a school zone at a speed greater than the speed limit set and posted under this section is responsible for an infraction and is required to pay a penalty of not less than twenty-five dollars ($25.00). (1977, c. 902, s. 2; 1979, c. 613; 1997-341, s. 1.1.)

OPINIONS OF ATTORNEY GENERAL

Purpose of Section. — The purpose of the act adopting this section was "to increase the drivers license points for speed violations in school zones" from two to three points. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

Without the adoption of this section there would have been no formal charge to correspond to the increased points provided for in G.S. 20-16(c). See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

This section, when passed, was only incidental to increase the drivers license points for speed violations in school zones. Authorization to reduce speed in school zones was already provided for by other statutes and the "Manual on Uniform Traffic Control Devices", which the Department is required to comply with by federal-aid provisions and G.S. 20-169. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

Reduction of Speed Limits on State Highways in School Zones Within Municipalities. — This section must be construed together with G.S. 20-141, 20-169, and other statutes, and when so construed, the provision for concurring ordinances in G.S. 20-141 when reducing speed limits on state highways in school zones within municipalities must be given effect and must be complied with. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

A municipal ordinance adopted pursuant to this section reducing the speed in a school zone on a State Highway System street is not effective without a concurring ordinance by the Department of Transportation as provided for by G.S. 20-141(f). See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

§ 20-141.2. Prima facie rule of evidence as to operation of motor vehicle altered so as to increase potential speed.

Proof of the operation upon any street or highway of North Carolina at a speed in excess of the limits provided by law of any motor vehicle when the motor, or any mechanical part or feature, or the design of the motor vehicle has been changed or altered so that there is a variation between such motor vehicle as changed or altered and the motor vehicle as constructed according to specification of the original motor vehicle manufacturer, with the result that the potential speed of such vehicle has been increased beyond that which existed prior to such change or alteration, or the proof of operation upon any street or highway of North Carolina at a speed in excess of the limits provided by law of any motor vehicle assembled from parts of two or more different makes of motor vehicles, whether or not any specially made or specially designed parts or appliances are included in the manufacture and assembly thereof, shall be prima facie evidence that such motor vehicle was operated at such time by the registered owner thereof. (1953, c. 1220.)

Legal Periodicals. — For brief comment on this section, see 31 N.C.L. Rev. 418 (1953).

§ 20-141.3. Unlawful racing on streets and highways.

(a) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in prearranged speed competition with another motor vehicle. Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

(b) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in speed competition with another motor vehicle. Any person willfully violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

(c) It shall be unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated on a public street, highway, or thoroughfare in prearranged speed competition with another motor vehicle, or to place or receive any bet, wager, or other thing of value from the outcome of any prearranged speed competition on any public street, highway, or thoroughfare. Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

(d) The Commissioner of Motor Vehicles shall revoke the driver's license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after 18 months from revocation. Upon filing of such application the Division may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past 18 months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Division may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(e) The Commissioner may suspend the driver's license or privilege to drive of every person convicted of violating the provisions of subsection (b) of this section. Such suspension shall be for a period of time within the discretion of the Commissioner, but not to exceed one year.

(f) All suspensions and revocations made pursuant to the provisions of this section shall be in the same form and manner and shall be subject to all procedures as now provided for suspensions and revocations made under the provisions of Article 2 of Chapter 20 of the General Statutes.

(g) When any officer of the law discovers that any person has operated or is operating a motor vehicle willfully in prearranged speed competition with another motor vehicle on a street or highway, he shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this section. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged with operating said motor vehicle willfully in prearranged speed competition with another motor vehicle, the sheriff shall return the motor vehicle to the owner thereof.

Notwithstanding the provisions for sale set out above, on petition by a lienholder, the court, in its discretion and upon such terms and conditions as it may prescribe, may allow reclamation of the vehicle by the lienholder. The lienholder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this section, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in prearranged speed competition with another motor vehicle on a street or highway without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.

If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within 10 days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lienholders and other claimants to said vehicles as set out in this section. (1955, c. 1156; 1957, c. 1358; 1961, c. 354; 1963, c. 318; 1967, c. 446; 1969, c. 186, s. 3; 1973, c. 1330, s. 8; 1975, c. 716, s. 5; 1979, c. 667, s. 31; 1993, c. 539, ss. 368-370; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, ss. 8, 9.)

CASE NOTES

The word "race," when used in conjunction with the operation of a motor vehicle on the highway, describes "speed competition with another motor vehicle" and is sufficient to charge a violation of this section. State v. Turner, 13 N.C. App. 603, 186 S.E.2d 681, cert. denied, 281 N.C. 157, 187 S.E.2d 587 (1972).

Violation of the racing statute is negligent per se. Harrington v. Collins, 40 N.C. App. 530, 253 S.E.2d 288, aff'd, 298 N.C. 535, 259 S.E.2d 275 (1979).

Violation of subsections (a) and (b) of this section is negligence per se. Those who participate are on a joint venture and are encouraging and inciting each other. The primary negligence involved is the race itself. Boykin v. Bennett, 253 N.C. 725, 118 S.E.2d 12 (1961).

A violation of subsection (b) of this section is negligence per se. Lewis v. Brunston, 78 N.C. App. 678, 338 S.E.2d 595 (1986).

Violation as Wilful or Wanton Negligence. — A violation of subsection (b) of this section constitutes wilful or wanton negligence. Lewis v. Brunston, 78 N.C. App. 678, 338 S.E.2d 595 (1986).

All Engaged in Race Are Liable. — Racing on the public highways is a plain and serious danger to every other person using the way. When persons are making such unlawful use of the highways and another is injured thereby, the former are liable in damages for the injuries sustained by the latter. And where a person is injured by such racing, all engaged in the race are liable even though only one, or even none, of the vehicles came in contact with the injured person. Boykin v. Bennett, 253 N.C. 725, 118 S.E.2d 12 (1961).

All who willfully participate in speed competition between motor vehicles on a public highway are jointly and concurrently negligent and if damage to one not involved in the race proximately results from it, all participants are liable, regardless of which of the racing cars actually inflicts the injury, and regardless of the fact that the injured person was a passenger in one of the racing vehicles. Boykin v. Bennett, 253 N.C. 725, 118 S.E.2d 12 (1961).

But Passenger Must Actively Participate to Be Negligent. — In order for a passenger to be a party to the offense under subsection (a) of this section and to be jointly and concurrently negligent, he must do more than fail to speak, remonstrate or leave the car. The evidence must show that the passenger in some way participated or was involved in the race in order to constitute acquiescence. Harrington v. Collins, 40 N.C. App. 530, 253 S.E.2d 288, aff'd, 298 N.C. 535, 259 S.E.2d 275 (1979).

Where defendant driver's participation in a prearranged speed competition in violation of this section constituted willful or wanton conduct and was a proximate cause of plaintiff's injuries, and plaintiff had no notice of an agreement to race when he entered the car, plaintiff's failure to remonstrate or to leave the car at a rural crossroads minutes past midnight on a cold Christmas Eve did not constitute willful or wanton conduct as a matter of law which would bar his action against the driver of the second car involved in the race for injuries caused by defendant's willful or wanton conduct. Harrington v. Collins, 298 N.C. 535, 259 S.E.2d 275 (1979).

Defendant's participation in a prearranged automobile race constituted willful or wanton conduct and was, as a matter of law, a proximate cause of injuries received by plaintiff passenger in a collision during the race. Harrington v. Collins, 40 N.C. App. 530, 253 S.E.2d 288, aff'd, 298 N.C. 535, 259 S.E.2d 275 (1979).

Proximate Cause of Collision. — Evidence showing that about one-half mile before and immediately prior to the accident defendants were driving their cars at night "bumper to bumper" at speeds of 75 to 80 m.p.h. on road where the speed limit was 45 m.p.h., if believed by the jury, was sufficient to support a finding by the jury that defendants operated their cars wilfully in speed competition in violation of subsection (b) of this section and that their negligence in this respect proximately caused collision. Lewis v. Brunston, 78 N.C. App. 678, 338 S.E.2d 595 (1986).

Acquittal of reckless driving in a court having jurisdiction to try defendant for that offense would not bar defendant's prosecution in superior court for involuntary manslaughter arising out of the same occurrence. Reckless driving and speed competition are not lesser included offenses of the charge of involuntary manslaughter. State v. Sawyer, 11 N.C. App. 81, 180 S.E.2d 387 (1971).

Instruction in Prosecution for Involuntary Manslaughter. — In a prosecution for involuntary manslaughter arising out of a violation of this section, an instruction which would permit the jury to find defendant guilty of involuntary manslaughter without first finding beyond a reasonable doubt that the speed competition was a proximate cause of the collision was erroneous. State v. Sawyer, 11 N.C. App. 81, 180 S.E.2d 387 (1971).

The trial court did not err in failing to charge the jury on the issue of whether or not the defendant engaged in a willful speed competition, where there was no evidence that the defendant purposely and deliberately engaged in a race. Hord v. Atkinson, 68 N.C. App. 346, 315 S.E.2d 339 (1984).

Applied in State v. Daniel, 255 N.C. 717, 122 S.E.2d 704 (1961); Mason v. Gillikin, 256 N.C. 527, 124 S.E.2d 537 (1962).

Cited in Orange Speedway, Inc. v. Clayton, 247 N.C. 528, 101 S.E.2d 406 (1958); State v. Triplett, 70 N.C. App. 341, 318 S.E.2d 913 (1984); Hinson v. Jarvis, 190 N.C. App. 607, 660 S.E.2d 604, 2008 N.C. App. LEXIS 990 (2008).

§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. — A person commits the offense of felony death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. — A person commits the offense of misdemeanor death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. — A person commits the offense of felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. — A person commits the offense of aggravated felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. — A person commits the offense of aggravated felony death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and

(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. — A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) or subsection (a5) of this section; and

(2) The person has a previous conviction under:
  a. Subsection (a1) of this section;
  b. Subsection (a5) of this section; or
  c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

A person convicted under this subsection shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. — Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class A1 misdemeanor.

(c) No Double Prosecutions. — No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death. (1973, c. 1330, s. 9; 1983, c. 435, s. 27; 1993, c. 285, s. 10; c. 539, ss. 371, 1259; 1994, Ex. Sess., c. 24, s. 14(c); 2006-253, s. 14; 2007-493, s. 15; 2009-528, s. 1.)

Effect of Amendments. — Session Laws 2009-528, s. 1, effective December 1, 2009, and applicable to offenses committed on or after that date, substituted "Class A1 misdemeanor" for "Class 1 misdemeanor" in subdivision (b)(5).

Legal Periodicals. — For survey of 1976 case law on criminal law, see 55 N.C.L. Rev. 976 (1977).

For 1997 legislative survey, see 20 Campbell L. Rev. 417.

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under corresponding provisions of former law and under this section as it read prior to the 1983 amendment and the 1993 amendment, which reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

This section held not unconstitutional as applied to defendant who was found to have caused victim's death in violating G.S. 20-150(a), which violation constituted ordinary negligence. State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988) aff'd, 323 N.C. 703, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Legislative Intent. — The intention of the legislature in enacting this section was to define a crime of lesser degree of manslaughter wherein criminal responsibility for death by vehicle is not dependent upon the presence of culpable or criminal negligence. State v. Freeman, 31 N.C. App. 93, 228 S.E.2d 516, cert. denied, 291 N.C. 449, 230 S.E.2d 766 (1976).

Felony murder rule may be used in automobile cases where an underlying felony is committed, even though the General Assembly has enacted the more specific statutes of felony death by vehicle and misdemeanor death by vehicle. State v. Jones, 133 N.C. App. 448, 516 S.E.2d 405 (1999), aff'd in part, rev'd in part on other grounds, and remanded, 353 N.C. 159, 538 S.E.2d 917 (2000).

The purpose of subsection (c) of this section is not to prevent the courts from treating one offense as a lesser included offense of the other, but rather to prevent the State from bringing a new prosecution against a defendant for death by vehicle after he has already been convicted or acquitted of manslaughter. State v. Freeman, 31 N.C. App. 93, 228 S.E.2d 516, cert. denied, 291 N.C. 449, 230 S.E.2d 766 (1976).

Every element of this section is embraced in the common-law definition of involuntary manslaughter. State v. Freeman, 31 N.C. App. 93, 228 S.E.2d 516, cert. denied, 291 N.C. 449, 230 S.E.2d 766 (1976).

Elements of Felony Death by Vehicle. — The offense of felony death by vehicle requires the identical essential elements to those required for a conviction of involuntary manslaughter predicated on a violation of G.S. 20-138.1, to wit: a willful violation of G.S. 20-138.1 and a causal link between that violation and the death. State v. Williams, 90 N.C. App. 615, 369 S.E.2d 832, cert. denied, 323 N.C. 369, 373 S.E.2d 555 (1988).

Felony death by vehicle is not a lesser included offense of involuntary manslaughter while driving under the influence of alcohol. State v. Williams, 90 N.C. App. 615, 369 S.E.2d 832, cert. denied, 323 N.C. 369, 373 S.E.2d 555 (1988).

Driving while impaired is a lesser included offense of felony death by vehicle, and upon conviction of felony death by vehicle the lesser offense merges into the greater; thus, it was error to sentence defendant both for felony death by vehicle and the lesser included offense of driving while impaired. State v. Richardson, 96 N.C. App. 270, 385 S.E.2d 194 (1989).

Specific Intent to Cause Death Not Required. — The phrase "intentionally causes the death of another person" as used within this section refers not to the presence of a specific intent to cause death, but rather to the fact that the act which resulted in death is intentionally committed and is an act of impaired driving under G.S. 20-138.1. State v. Williams, 90 N.C. App. 615, 369 S.E.2d 832, cert. denied, 323 N.C. 369, 373 S.E.2d 555 (1988).

Defendant May Assert Intervening Negligence of Another. — A defendant charged with death by vehicle under this section may assert the intervening negligence of another as a defense. State v. Tioran, 65 N.C. App. 122, 308 S.E.2d 659 (1983).

Prosecution After Conviction Under § 20-158 as Double Jeopardy. — Where defendant entered a plea of guilty to a charge of failing to yield the right-of-way in violation of G.S. 20-158 and a passenger thereafter died from injuries received in the resultant accident, the trial of defendant on a charge of death by vehicle under this section "in that he did unlawfully and willfully fail to yield the right-of-way . . . in violation of General Statute 20-158" would place defendant in jeopardy for a second time on the charge of failure to yield the right-of-way in violation U.S. Const., Amend. V. State v. Griffin, 51 N.C. App. 564, 277 S.E.2d 77 (1981).

Charge Based on Violation of § 20-174(e). — Where the evidence was sufficient to permit conviction for a violation of G.S. 20-174(e), submission of the charge of death by vehicle based on a violation of that section was proper. State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245 (1980), aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 448 (1981).

Charge Properly Refused. — Trial court did not err in failing to submit to the jury a possible verdict of misdemeanor death by motor vehicle, as since the jury rejected involuntary manslaughter in favor of second degree murder, it would also have rejected the lesser offense of misdemeanor death by a vehicle. State v. Goodman, 149 N.C. App. 57, 560 S.E.2d 196, 2002 N.C. App. LEXIS 132 (2002), cert. granted, 356

N.C. 170, 568 S.E.2d 852 (2002).

A plea of "responsible" to the infraction of driving left of center did not bar later prosecution, on double jeopardy grounds, of the defendant for misdemeanor death by vehicle, when the only basis for the misdemeanor death charge was the driving left of center infraction. State v. Hamrick, 110 N.C. App. 60, 428 S.E.2d 830, appeal dismissed, cert. denied, 334 N.C. 436, 433 S.E.2d 181 (1993).

Failure of trial judge to allow jury to consider lesser degree of homicide of death by vehicle constituted prejudicial error that was not cured by a verdict of guilty of the more serious crime of involuntary manslaughter, where the evidence would have permitted the jury to find defendant guilty of death by vehicle. State v. Baum, 33 N.C. App. 633, 236 S.E.2d 31, cert. denied, 293 N.C. 253, 237 S.E.2d 536 (1977).

Instruction on Intentional or Reckless Conduct Upheld. — A jury instruction which, in distinguishing death by vehicle from involuntary manslaughter, merely pointed out that with respect to the offense of death by vehicle the State is not required to prove any intentional or reckless conduct on the part of the defendant, comported with the definition in this section. State v. Thompson, 37 N.C. App. 444, 246 S.E.2d 81, cert. denied, 295 N.C. 652, 248 S.E.2d 257 (1978).

Failure to instruct on contributory negligence. — Trial court's refusal to instruct the jury on contributory negligence when it submitted the charge of felony death by vehicle under G.S. 20-141.4(a1)to the jury did not amount to reversible error because defendant did not seek such an instruction, the requested instruction was counter to jurisprudence of North Carolina, and the jury was properly instructed. State v. Bailey, 184 N.C. App. 746, 646 S.E.2d 837, 2007 N.C. App. LEXIS 1593 (2007).

Amendment of Warrant's Allegations of Motor Vehicle Violation. — Although the death by vehicle statute contemplates that some violation of a motor vehicle statute or ordinance be specified in a warrant charging death by vehicle, it is not essential that the motor vehicle violation alleged in the warrant as originally issued be the same as the motor vehicle violation alleged in the warrant as considered by the jury, where the substituted motor vehicle violation is substantially similar to that originally alleged. State v. Clements, 51 N.C. App. 113, 275 S.E.2d 222 (1981).

In a trial de novo in the superior court upon a warrant alleging death by vehicle, the trial court did not err in allowing the State to amend the warrant at the close of the State's evidence by striking an allegation of "following too closely" and adding an allegation of "failure to reduce speed to avoid an accident, a violation of G.S. 20-141(m)," since the nature of the offense with which the defendant was charged, death by vehicle, was not changed by the amendment. State v. Clements, 51 N.C. App. 113, 275 S.E.2d 222 (1981).

It is not always necessary to have an expert testify as to the cause of death where all of the facts disclose a set of circumstances from which any person of average intelligence could be satisfied beyond a reasonable doubt that the fatality occurred in the collision. State v. Smith, 37 N.C. App. 64, 245 S.E.2d 227 (1978).

Jurisdiction. — In a prosecution on separate bills of indictment for failing to stop an automobile at the scene of an accident in which an individual was killed under G.S. 20-166(a) and death by vehicle, where the two offenses were based on the same act or transaction, the superior court had jurisdiction of the misdemeanor offense of death by vehicle. State v. Fearing, 304 N.C. 471, 284 S.E.2d 487 (1981).

Trial court erred in imposing condition on defendant's probation for conviction of misdemeanor death by vehicle on payment of $500,000 restitution, with which she clearly could not comply. State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866 (1989), cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Although the trial court properly used the wrongful death statute G.S. 28A-18-2 to compute the amount of restitution which defendant found guilty of misdemeanor death by vehicle should pay, it erred in its application of G.S. 28A-18-2. State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866 (1989), cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Applied in State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); State v. Jones, 353 N.C. 159, 538 S.E.2d 917, 2000 N.C. LEXIS 894 (2000).

Cited in State v. Hice, 34 N.C. App. 468, 238 S.E.2d 619 (1977); State v. Howard, 70 N.C. App. 487, 320 S.E.2d 17 (1984); State v. Stroud, 78 N.C. App. 599, 337 S.E.2d 873 (1985); State v. Worthington, 89 N.C. App. 88, 365 S.E.2d 317 (1988); State v. Ealy, 94 N.C. App. 707, 381 S.E.2d 185 (1989); State v. Beale, 324 N.C. 87, 376 S.E.2d 1 (1989); North Carolina v. Ivory, 906 F.2d 999 (4th Cir. 1990); State v. Byers, 105 N.C. App. 377, 413 S.E.2d 586 (1992); State v. Hudson, 123 N.C. App. 336, 473 S.E.2d 415 (1996).

§ 20-141.5. Speeding to elude arrest.

(a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.
(2) Gross impairment of the person's faculties while driving due to:
  a. Consumption of an impairing substance; or
  b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.
(3) Reckless driving as proscribed by G.S. 20-140.
(4) Negligent driving leading to an accident causing:
  a. Property damage in excess of one thousand dollars ($1,000); or
  b. Personal injury.
(5) Driving when the person's drivers license is revoked.
(6) Driving in excess of the posted speed limit, during the days and hours when the posted limit is in effect, on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).
(7) Passing a stopped school bus as proscribed by G.S. 20-217.
(8) Driving with a child under 12 years of age in the vehicle.

(b1) When a violation of subsection (a) of this section is the proximate cause of the death of any person, the person violating subsection (a) of this section shall be guilty of a Class H felony. When a violation of subsection (b) of this section is the proximate cause of the death of any person, the person violating subsection (b) of this section shall be guilty of a Class E felony.

(c) Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

(d) The Division shall suspend, for up to one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for two years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of two of the aggravating factors listed in subsection (b) of this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of three or more aggravating factors listed in subsection (b) of this section. In the case of a first felony conviction under this section where only two aggravating factors were present, the licensee may apply to the sentencing court for a limited driving privilege after a period of 12 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

(e) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection (c) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process.

(f) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies. (1997-443, s. 19.26(a); 2005-341, s. 1.)

Editor's Note. — Session Laws 2005-341, s. 1, effective December 1, 2005, and applicable to offenses committed on or after that date, added present subsection (c) and redesignated former subsections (c) through (f) as present subsections (d) through (g). At the direction of the Revisor of Statutes, the new subsection (c) has been redesignated as (b1) and subsections (c) through (f) have not been redesignated.

CASE NOTES

Jury's Duty as to Finding Two or More Violations. — The eight aggravating factors set out by this section are not separately chargeable, discrete criminal activities requiring a jury to unanimously agree on the same two factors for purposes of aggravation; rather, the statutory factors are merely alternative ways of proving the crime of felonious speeding to elude arrest and a defendant may be convicted pursuant to this section if the jury merely agrees that he committed two of those violations although they do not agree on which two. State v. Funchess, 141 N.C. App. 302, 540 S.E.2d 435, 2000 N.C. App. LEXIS 1398 (2000).

Because this statute only requires proof of two or more factors, the State was not required to prove all three factors pertinent to defendant's case although these were stated conjunctively in the indictment. State v. Funchess, 141 N.C. App. 302, 540 S.E.2d 435, 2000 N.C. App. LEXIS 1398 (2000).

The failure of the trial court to charge on knowledge of revocation pursuant to G.S. 20-28 in support of an aggravated sentence under this section was not erroneous where the State's evidence tended to show that it complied with the provisions for giving notice of revocation or suspension of a driver's license found in G.S. 20-48 and the defendant neither contested that evidence nor offered contrary evidence. State v. Funchess, 141 N.C. App. 302, 540 S.E.2d 435, 2000 N.C. App. LEXIS 1398 (2000).

Fleeing to Elude Arrest Not Essential Element for Indictment. — Offense of fleeing to elude arrest was not dependent on the specific duty that the officer was performing at the time of the offense, and therefore it was not an essential element required to be set out in indictment. State v. Teel, 180 N.C. App. 446, 637 S.E.2d 288, 2006 N.C. App. LEXIS 2380 (2006).

Defendant's prior conviction under G.S. 20-141.5(a) obviously presented a serious risk of injury to another in the abstract; it had not been necessary to consider evidence concerning the statutory definition, and thus, in sentencing the defendant, the federal district court correctly proceeded under the "otherwise" clause of 18 U.S.C.S. § 924(e)(2)(B). United States v. Green, — F.3d —, 2002 U.S. App. LEXIS 9656 (4th Cir. May 22, 2002), cert. denied, 537 U.S. 940, 123 S. Ct. 42, 154 L. Ed. 2d 246 (2002).

Reasonable Suspicion for Police to Stop. — Defendant's conduct in failing to stop at a road checkpoint, but instead, driving through it and nearly striking an officer, gave the officer reasonable suspicion that defendant had committed several crimes, including violations of G.S. 20-141.5(a) and G.S. 20-140(a); the officer's stop and arrest of defendant were valid. State v. Mitchell, 358 N.C. 63, 592 S.E.2d 543, 2004 N.C. LEXIS 17 (2004).

Jury Instruction Proper. — Trial court's disjunctive instruction on the charge of felony operation of a motor vehicle to elude arrest was not improper; while many of the enumerated aggravating factors are in fact separate crimes under various provisions of the general statutes, they are not separate offenses, but are merely alternate ways of enhancing the punishment for speeding to elude arrest from a misdemeanor to a class H felony. State v. Hazelwood, 187 N.C. App. 94, 652 S.E.2d 63, 2007 N.C. App. LEXIS 2311 (2007).

Evidence Held Sufficient to Support Conviction. — Where an officer stated defendant sped at a rate "very much" in excess of 15 miles per hour over the speed limit and driving into oncoming traffic prior to slamming on the brakes and sliding to a halt in front of an occupied mobile home, that was sufficient evidence for the jury to find defendant guilty of eluding an officer while speeding in excess of 15 miles over the speed limit and driving recklessly. State v. Davis, 163 N.C. App. 587, 594 S.E.2d 57, 2004 N.C. App. LEXIS 408 (2004), cert. denied, 358 N.C. 547, 599 S.E.2d 564 (2004).

Proof that defendant was grossly impaired while driving due the consumption of alcohol and was driving recklessly was sufficient to support a conviction for felonious fleeing to elude arrest; the State was not required to prove that defendant drove in excess of 15 miles per hour over the legal speed limit as well since G.S. 20-141.5 only requires proof of two of the three listed factors. State v. Stokes, 174 N.C. App. 447, 621 S.E.2d 311, 2005 N.C. App. LEXIS 2495 (2005).

State presented sufficient evidence of the aggravating factors necessary to support defendant's conviction for felony fleeing to elude arrest under G.S. 20-141.5(b); during a high-speed chase, defendant was driving more than 15 mph over the speed limit and he was driving recklessly under G.S. 20-140. State v. Smith, 178 N.C. App. 134, 631 S.E.2d 34, 2006 N.C. App. LEXIS 1290 (2006).

Applied in State v. Jones, 157 N.C. App. 472, 579 S.E.2d 408, 2003 N.C. App. LEXIS 751 (2003); State v. Scott, 167 N.C. App. 783, 607 S.E.2d 10 (2005).

Cited in Parish v. Hill, 350 N.C. 231, 513 S.E.2d 547 (1999); State v. Bagley, — N.C. App. —, 644 S.E.2d 615, 2007 N.C. App. LEXIS 1162 (2007).

§ 20-141.6. Aggressive Driving.

(a) Any person who operates a motor vehicle on a street, highway, or public vehicular area is guilty of aggressive driving if the person:

(1) Violates either G.S. 20-141 or G.S. 20-141.1, and

(2) Drives carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.

(b) For the purposes of this section only, in order to prove a violation of subsection (a)(2), the State must show that the person committed two or more of the below specified offenses while in violation of subsection (a)(1):

(1) Running through a red light in violation of G.S. 20-158(b)(2) or (b)(3), or G.S. 20-158(c)(2) or (c)(3).

(2) Running through a stop sign in violation of G.S. 20-158(b)(1) or (c)(1).

(3) Illegal passing in violation of G.S. 20-149 or G.S. 20-150.

(4) Failing to yield right-of-way in violation of G.S. 20-155, 20-156, 20-158(b)(4) or (c)(4) or 20-158.1.

(5) Following too closely in violation of G.S. 20-152.

(c) A person convicted of aggressive driving is guilty of a Class 1 misdemeanor.

(d) The offense of reckless driving under G.S. 20-140 is a lesser-included offense of the offense set forth in this section. (2004-193, s. 1.)

§ 20-142: Repealed by Session Laws 1991, c. 368, s. 2.

Cross References. — For current law, see G.S. 20-142.1 to 20-142.5.

§ 20-142.1. Obedience to railroad signal.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21. (1991, c. 368, s. 1; 2005-349, s. 12.)

CASE NOTES

Contributory Negligence. — Decedent's own negligence contributed to his injuries and barred recovery on plaintiff's negligence claim where the evidence showed that engineer signaled train's approach, that plaintiff failed to explain what prevented decedent from hearing warning bell and horn, and that decedent also failed to stop within 50 feet of the crossing to determine whether it was safe to proceed. Parchment v. Garner, 135 N.C. App. 312, 520 S.E.2d 100 (1999).

Trial court erred in granting defendants' motion to dismiss the personal representative's negligence action because the allegations of the complaint did not necessarily dictate a finding of contributory negligence by the decedent; the fact that the decedent bypassed the crossing gate, in violation of G.S. 20-142.1, was evidence that could be considered in deciding whether the decedent breached the duty of exercising ordinary care. Sharp v. CSX Transp., Inc., 160 N.C. App. 241, 584 S.E.2d 888, 2003 N.C. App. LEXIS 1732 (2003).

North Carolina Industrial Commission did not err in holding that an injured person was not contributorily negligent in that: (1) the injured party's attention was focused on the stop sign to the right side of the tracks and that she was slowing to obey that stop sign when she was struck by a train; (2) the evidence conflicted as to whether the train issued a signal audible from 1,500 feet of the highway crossing and whether the approaching train was plainly visible to invoke G.S. 20-142.1(a)(3), (3) a passenger in another driver's car's testimony was sufficient to support the Commission's finding that the injured party had slowed down in an attempt to obey the stop sign, and (4) a field support engineer with the Department of Transportation testified that the stop sign was confusing. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003), review dismissed, review denied, 358 N.C. 235, 595 S.E.2d 153 (2004), cert. denied, 358 N.C. 545, 599 S.E.2d 404 (2004).

Applied in Gilliam v. McKnight, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 23865 (M.D.N.C. Dec. 4, 2002).

§ 20-142.2. Vehicles stop at certain grade crossing.

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se. An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21. (1991, c. 368, s. 1; 2005-349, s. 13.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under corresponding provisions of earlier law.*

Necessity for Section. — Although under Hinton v. Southern Ry., 172 N.C. 587, 90 S.E. 756 (1916), a railroad is a highway, an amendment of the statute was necessary in order to compel the operator of a motor vehicle to bring it to a full stop before crossing or attempting to cross a railroad track. State v. Stallings, 189 N.C. 104, 126 S.E. 187 (1925).

Duty to Stop as Mixed Question of Law and Fact. — A driver of an automobile is not required under all circumstances to stop before driving upon a railroad grade crossing, and whether he is required to do so under the particular circumstances disclosed by the evidence is ordinarily a mixed question of law and fact to be submitted to the jury upon proper instruction from the court. Keller v. Southern Ry., 205 N.C. 269, 171 S.E. 73 (1933).

Reasonably Prudent Man Test. — The test is whether a reasonably prudent man, knowing the custom of the crossing signals by bell and whistle and also the automatic signals, would approach the track in the reasonable belief that no train was approaching. Earnhardt v. Southern Ry., 281 F. Supp. 585 (M.D.N.C. 1968), aff'd, 405 F.2d 877 (4th Cir. 1969).

Extenuating Circumstances May Relax Diligence Required of Traveller. — While ordinarily a driver would be guilty of contributory negligence as a matter of law when he did not stop when he was 25 feet from the track where he could have seen the train if he had looked, extenuating circumstances may relax the diligence required of the traveller. Hence from the evidence the jury could reasonably have concluded that the driver was listening for crossing signals, but that they were not given, and looking for the automatic signals which normally would warn him if a train was approaching, and that at the time he got within 25 feet of the track, he was misled by the failure of the automatic signals and the failure of defendant to give any warning of any kind of the train which was approaching at 60 miles per hour or 88 feet per second. Earnhardt v. Southern Ry., 281 F. Supp. 585 (M.D.N.C. 1968), aff'd, 405 F.2d 877 (4th Cir. 1969).

Failure to come to a full stop before entering railroad crossing as required by statute is not contributory negligence per se, but such failure is a circumstance to be considered by the jury with the other evidence in the case upon the question. White v. North Carolina R.R., 216 N.C. 79, 3 S.E.2d 310 (1939).

Failure of a motorist to stop his automobile before crossing a railroad at a grade crossing on a public highway, as directed by this section, at a distance not exceeding 50 feet from the nearest rail, did not constitute contributory negligence per se in his action against railroad company to recover damages to his car caused by a collision with a train standing upon the tracks; but where the evidence tended only to show that the proximate cause of the plaintiff's injury was his own negligence in exceeding the speed he should have used under the circumstances, a judgment as of nonsuit thereon should have been entered on defendant's motion therefor properly entered. Weston v. Southern Ry., 194 N.C. 210, 139 S.E. 237 (1927).

§ 20-142.3. Certain vehicles must stop at railroad grade crossing.

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.
(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.
(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.
(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.
(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d), (e) Repealed by Session Laws 2001-487, s. 50(g).

(f) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21. (1991, c. 368, s. 1; 1999-274, ss. 1, 2; 2001-487, s. 50(g); 2005-349, s. 14.)

Editor's Note. — Subsection (f) was originally enacted by Session Laws 2005-349, s. 14, as subsection (e). The subsection has been redesignated at the direction of the Revisor of Statutes.

§ 20-142.4. Moving heavy equipment at railroad grade crossing.

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:
(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;
(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and
(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "Exempt".

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(g) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21. (1991, c. 368, s. 1; 2005-349, s. 15.)

§ 20-142.5. Stop when traffic obstructed.

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21. (1991, c. 368, s. 1; 2005-349, s. 16.)

§§ 20-143, 20-143.1: Repealed by Session Laws 1991, c. 368, ss. 2, 3.

Cross References. — For current law, see G.S. 20-142.1 to 20-142.5.

§ 20-144. Special speed limitation on bridges.

It shall be unlawful to drive any vehicle upon any public bridge, causeway or viaduct at a speed which is greater than the maximum speed which can with safety to such structure be maintained thereon, when such structure is signposted as provided in this section.

The Department of Transportation, upon request from any local authorities, shall, or upon its own initiative may, conduct an investigation of any public bridge, causeway or viaduct, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this Article, the Division shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of 100 feet beyond each end of such structure. The findings and determination of the Department of Transportation shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon. (1937, c. 407, s. 106; 1957, c. 65, s. 11; 1973, c. 507, ss. 5, 21; 1975, c. 716, s. 5; 1977, c. 464, s. 34.)

Cross References. — As to the power of the Department of Transportation to fix maximum load limits on bridges, see G.S. 136-72.

CASE NOTES

Instruction in Prosecution for Involuntary Manslaughter Held Erroneous. — In a prosecution for involuntary manslaughter arising out of a violation of this section, instruction which failed to require the jury to find beyond a reasonable doubt that the deliberate and intentional violation of the speed statute upon the part of defendant was a proximate cause of the collision which inflicted the injuries resulting in death was erroneous. State v. Sawyer, 11 N.C. App. 81, 180 S.E.2d 387 (1971).

§ 20-145. When speed limit not applicable.

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their duties. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (1937, c. 407, s. 107; 1947, c. 987; 1971, c. 5; 1977, c. 52, s. 3; 1985, c. 454, s. 5.)

Legal Periodicals. — For note on municipal liability for accident involving fire truck responding to emergency call for inhalator, see 30 N.C.L. Rev. 89 (1951).

For note discussing the effect of this section on the standard of care required of police officers in the performance of official duties, see 39 N.C.L. Rev. 460 (1961).

For a survey of 1996 developments in tort law, see 75 N.C.L. Rev. 2468 (1997).

CASE NOTES

Other Exemptions for Police Vehicles Not Precluded. — The legislature, by including the express exemption for police vehicles when operated with due regard for safety in this section, did not thereby evidence an intent that there be no exemption under any circumstances from other sections of the Motor Vehicle Act for police vehicles while being similarly operated. Collins v. Christenberry, 6 N.C. App. 504, 170 S.E.2d 515 (1969).

Police Responding to Notice of Pursuit. — The language of this section is broad enough to include not only police in direct or immediate pursuit of law violators or suspected violators, but also police who receive notice of the pursuit and respond by proceeding to the scene for the purpose of assisting in the chase or apprehension. State v. Flaherty, 55 N.C. App. 14, 284 S.E.2d 565 (1981).

Balancing Test Applied by Police Officers. — In pursuing a fleeing suspect, a law enforcement officer must conduct a balancing test, weighing the interests of justice in apprehending the fleeing suspect with the interests of the public in not being subject to unreasonable risks of injury. Parish v. Hill, 350 N.C. 231, 513 S.E.2d 547 (1999).

Standard of Care Applicable to Police Officers. — The fact that a police vehicle is exempt from the operation of traffic regulations or enjoys certain prior rights over other vehicles does not permit the operator of such vehicle to drive in reckless disregard of the safety of others, nor does it relieve him from the general duty of exercising due care. Goddard v. Williams, 251 N.C. 128, 110 S.E.2d 820 (1959), overruled in part, Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996).

An officer, when in pursuit of a lawbreaker, is not to be deemed negligent merely because he fails to observe the requirements of the Motor Vehicle Act. His conduct is to be examined and tested by another standard. He is required to observe the care which a reasonably prudent man would exercise in the discharge of official duties of a like nature under like circumstances. Goddard v. Williams, 251 N.C. 128, 110 S.E.2d 820 (1959), overruled in part, Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996).

For discussion of the action a reasonable man, who is serving as a member of the North Carolina state highway patrol should take when he tries to stop a motor vehicle for following too closely and the driver of the vehicle does not stop. McMillan v. Newton, 63 N.C. App. 751, 306 S.E.2d 470, cert. denied, 309 N.C. 821, 310 S.E.2d 350 (1983).

The standard of care under this section is the reckless disregard of the safety of others, i.e. gross negligence, and this standard applies whether or not the pursuing officer's vehicle was in the collision. Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996).

Standard of care a police officer must use when acting within the contours of G.S. 20-145 is that of gross negligence. Jones v. City of Durham, 168 N.C. App. 433, 608 S.E.2d 387, 2005 N.C. App. LEXIS 337 (2005), aff'd, 360 N.C. 81, 622 S.E.2d 596 (2005).

City and one of its officers were granted summary judgment with regard to a pedestrian's gross negligence claim related to being struck by a police cruiser, because the pedestrian failed to show any triable issues of fact as to gross negligence on the part of the police officer responding to a backup call; the pedestrian's own deposition testimony showed that she had heard sirens and nevertheless had proceeded into the street, against a traffic light, and outside of any crosswalk. Jones v. City of Durham, 168 N.C. App. 433, 608 S.E.2d 387, 2005 N.C. App. LEXIS 337 (2005), aff'd, 360 N.C. 81, 622 S.E.2d 596 (2005).

Gross or Wanton Negligence. — Gross negligence in the pursuit context is wanton conduct done with conscious or reckless disregard for the rights and safety of others. D'Alessandro v. Westall, 972 F. Supp. 965 (W.D.N.C. 1997).

Law enforcement officers were not entitled to summary judgment in claim brought against them under this section where a reasonable jury could conclude that the officers' pursuit of motorist constituted gross negligence. D'Alessandro v. Westall, 972 F. Supp. 965 (W.D.N.C. 1997).

Summary judgment was proper where plaintiff failed to demonstrate the existence of a genuine issue of material fact as to gross negligence on the part of the officers who attempted to apprehend a motorist suspected of driving while intoxicated and where the actions of the officers were otherwise exempt under this section. Norris v. Zambito, 135 N.C. App. 288, 520 S.E.2d 113 (1999).

Officer's speed of 10 to 25 miles per hour in excess of the 35 mile-per-hour speed limit in responding to an emergency call from another officer in peril did not support a finding of gross negligence under G.S. 20-145 in a claim for injuries sustained when the officer struck plaintiff; the officer's compliance with the authoritative training standard in this emergency situation fully supported the appropriateness of his decision to perform an evasive maneuver upon viewing the injured person in the road and negated the contention of gross negligence. Jones v. City of Durham, 360 N.C. 81, 622 S.E.2d 596, 2005 N.C. LEXIS 1315 (2005).

G.S. 20-145 provided an exception to the speed limit rules for emergency vehicles. Inclusion of the word "wanton" in police pursuit cases was a shorthand reference to the "reckless disregard" limitation of G.S. 20-145 and did not refer to the definition of the word from a wholly unrelated statute — G.S. 1D-5(7), the punitive damages statute. Villepigue v. City of Danville, 190 N.C. App. 359, 661 S.E.2d 12, 2008 N.C. App. LEXIS 904 (2008).

City Policy. — There was insufficient evidence that city and its police chief failed to develop a substantive policy on high speed chases, where the policy gave officers wide discretion in conducting high speed chases, but did delineate factors officers were to consider, and balanced the danger of pursuit against allowing the suspect to escape. Parish v. Hill, 130 N.C. App. 195, 502 S.E.2d 637 (1998), rev'd on other grounds, 350 N.C. 231, 513 S.E.2d 547 (1999).

Police officers did not act with "gross negligence" in pursuing a suspected traffic violator, where the officers were well behind the suspect when he crashed his car into a residence, killing his passenger, and the officers did not try to force the suspect's car off the road or to overtake it. Parish v. Hill, 350 N.C. 231, 513 S.E.2d 547 (1999).

Evidence of a violation of a city's pursuit policy does not show gross negligence; although it may provide evidence of some negligence, it does not conclusively establish negligence. Jones v. City of Durham, 168 N.C. App. 433, 608 S.E.2d 387, 2005 N.C. App. LEXIS 337 (2005), aff'd, 360 N.C. 81, 622 S.E.2d 596 (2005).

No Liability of Officer for Death of Innocent Motorist. — Where a police officer initiated the pursuit of a motorist who imposed an imminent threat to public safety, traveled at a high rate of speed, and passed multiple cars while using his blue lights and siren on a narrow two-lane road, the officer's conduct did not rise to the elevated standard of gross negligence that would impose liability on the officer for a citizen's death. The weather was clear; the road relatively straight, with only a slight bend and grade; it was approximately 2:30-3:00 p.m. on a Sunday afternoon; and the officer was unaware of the upcoming intersection's activity, the victim's car, or the stopped line of traffic directly in front of his vehicle. Villepigue v. City of Danville, 190 N.C. App. 359, 661 S.E.2d 12, 2008 N.C. App. LEXIS 904 (2008).

Burden of Proof. — It would be a fair allocation of the burden of proof to require a defendant to prove that he comes within the exceptions recognized by this section. State v. Flaherty, 55 N.C. App. 14, 284 S.E.2d 565 (1981).

Applied in Campbell v. O'Sullivan, 4 N.C. App. 581, 167 S.E.2d 450 (1969); N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888, 2004 N.C. LEXIS 909 (2004).

Cited in Fowler v. North Carolina Dep't of Crime Control & Pub. Safety, 92 N.C. App. 733, 376 S.E.2d 11 (1989); Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994); Clayton v. Branson, 170 N.C. App. 438, 613 S.E.2d 259, 2005 N.C. App. LEXIS 1070 (2005).

§ 20-146. Drive on right side of highway; exceptions.

(a) Upon all highways of sufficient width a vehicle shall be driven upon the right half of the highway except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a highway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a highway designated and signposted for one-way traffic.

(b) Upon all highways any vehicle proceeding at less than the legal maximum speed limit shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any highway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the highway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the highway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a)(2) hereof.

(d) Whenever any street has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a street which is divided into three or more lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in the preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control device.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the direction of every such device.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of streets, and drivers of vehicles shall obey the directions of every such device.

(e) Notwithstanding any other provisions of this section, when appropriate signs have been posted, it shall be unlawful for any person to operate a motor vehicle over and upon the inside lane, next to the median of any dual-lane highway at a speed less than the posted speed limit when the operation of said motor vehicle over and upon said inside lane shall impede the steady flow of traffic except when preparing for a left turn. "Appropriate signs" as used herein shall be construed as including "Slower Traffic Keep Right" or designations of similar import. (1937, c. 407, s. 108; 1965, c. 678, s. 2; 1973, c. 1330, s. 3; 1975, c. 593; 1985, c. 764, s. 25; 1985 (Reg. Sess., 1986), c. 852, s. 17; 2001-487, s. 11.)

Legal Periodicals. — For discussion of the subject matter of statutes similar to this and succeeding sections, see 2 N.C.L. Rev. 178 (1924) and 5 N.C.L. Rev. 248 (1927).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding provisions of former law.*

Double Jeopardy. — A violation of this section constitutes an "offense" within the double jeopardy clause of the Fifth Amendment. State v. Hamrick, 110 N.C. App. 60, 428 S.E.2d 830, appeal dismissed, cert. denied, 334 N.C. 436, 433 S.E.2d 181 (1993).

The purpose of this section is the protection of occupants of other vehicles using the public highway and pedestrians and property thereon. Powell v. Clark, 255 N.C. 707, 122 S.E.2d 706 (1961); Sessoms v. Roberson, 47 N.C. App. 573, 268 S.E.2d 24 (1980).

This section prescribes a standard of care for a motorist, and the standard fixed by the legislature is absolute. Bondurant v. Mastin, 252 N.C. 190, 113 S.E.2d 292 (1960).

A person walking along a public highway pushing a handcart is a pedestrian within the purview of G.S. 20-174(d), and is not a driver of a vehicle within the meaning of this section and G.S. 20-149. Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948).

Right to Assume That Approaching Vehicle Will Remain on Own Side of Road. — A motorist proceeding on his right side of the highway is not required to anticipate that an automobile which is coming from the opposite direction on its own side of the road will suddenly leave its side of the road and turn into his path. He has the right to assume under such circumstances that the approaching automobile will remain on its own side of the road until the vehicles meet and pass in safety. Johnson v. Douglas, 6 N.C. App. 109, 169 S.E.2d 505 (1969).

Violation of this section is negligence per se. Boyd v. Harper, 250 N.C. 334, 108 S.E.2d 598 (1959); Anderson v. Webb, 267 N.C. 745, 148 S.E.2d 846 (1966).

One who fails to comply with the provisions of this section is negligent. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

But Negligence Per Se Rule Is Inapplicable to Police. — The principle that violation of this section constitutes negligence per se is not applicable to law-enforcement officers, who are not to be deemed negligent merely for failure to observe the rules of the road while engaged in the pursuit of lawbreakers. Wade v. Grooms, 37 N.C. App. 428, 246 S.E.2d 17 (1978).

When Violation Constitutes Culpable Negligence. — Violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton or intentional. But where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Hancock, 248 N.C. 432, 103 S.E.2d 491 (1958).

Violation Constitutes Actionable Negligence When It Is Proximate Cause of Injury. — Violation of this section is negligence per se, which, when it is the proximate cause of injury, constitutes actionable negligence. Anderson v. Webb, 267 N.C. 745, 148 S.E.2d 846 (1966); Smith v. Kilburn, 13 N.C. App. 449, 186 S.E.2d 214, cert. denied, 281 N.C. 155, 187 S.E.2d 586 (1972).

A violation of this section is negligence per se, and when proximate cause of injury or damage is shown, such violation constitutes actionable negligence. Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Lassiter v. Williams, 272 N.C. 473, 158 S.E.2d 593 (1968); Sessoms v. Roberson, 47 N.C. App. 573, 268 S.E.2d 24 (1980).

A violation of this section is negligence per se, but to be actionable, such negligence must be the proximate cause of injury. Tysinger v. Coble Dairy Prods., 225 N.C. 717, 36 S.E.2d 246 (1945). See also, Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946); Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960); Davis v. Imes, 13 N.C. App. 521, 186 S.E.2d 641 (1972).

A violation of this section is negligence per se, but such negligence is not actionable unless there is a causal relation between the breach and the injury. Grimes v. Carolina Coach Co., 203 N.C. 605, 166 S.E. 599 (1932). See also, Stovall v. Ragland, 211 N.C. 536, 190 S.E. 899 (1937); McCombs v. McLean Trucking Co., 252 N.C. 699, 114 S.E.2d 683 (1960).

If the negligence resulting from the failure to comply with the provisions of this section proximately causes injury, liability results. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963).

A safety statute, such as this section, is pertinent when, and only when, there is evidence tending to show a violation thereof proximately caused the alleged injuries. Powell v. Clark, 255 N.C. 707, 122 S.E.2d 706 (1961).

Proximate Cause as a Jury Question. — Whether a violation of the provisions of this section is the proximate cause of an injury is for the jury to determine. Stephens v. Southern Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963); Sessoms v. Roberson, 47 N.C. App. 573, 268 S.E.2d 24 (1980).

Prima Facie Case of Actionable Negligence Is Made Out by Evidence that Defendant Was Driving Left of Center. — Evidence in action for injuries or damages caused by an automobile collision showing that defendant was driving left of the center of the highway when the collision occurred made out a prima facie case of actionable negligence. Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Lassiter v. Williams, 272 N.C. 473, 158 S.E.2d 593 (1968).

But Defendant May Show Cause of Violation Was Not Negligence. — A violation of this section, requiring a vehicle operator to drive on the right side of the highway, with certain exceptions, is negligence per se. However, a defendant may escape liability by showing that he was on the wrong side of the road from a cause other than his own negligence. Nationwide Mut. Ins. Co. v. Chantos, 298 N.C. 246, 258 S.E.2d 334 (1979).

When a plaintiff suing to recover damages for injuries sustained in a collision offers evidence tending to show that the collision occurred when the defendant was driving to the left of the center of the highway, such evidence made out a prima facie case of actionable negligence. The defendant, of course, could rebut the inference arising from such evidence by showing that he was on the wrong side of the road from a cause other than his own negligence. Anderson v. Webb, 267 N.C. 745, 148 S.E.2d 846 (1966); Smith v. Kilburn, 13 N.C. App. 449, 186 S.E.2d 214, cert. denied, 281 N.C. 155, 187 S.E.2d 586 (1972); Sessoms v. Roberson, 47 N.C. App. 573, 268 S.E.2d 24 (1980).

Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994), rev'd on other grounds, 339 N.C. 601, 453 S.E.2d 861 (1995).

The doctrine of sudden emergency overrides the mandatory standards of subdivision (a)(2) of this section. Harris v. Guyton, 54 N.C. App. 434, 283 S.E.2d 538 (1981), cert. denied, 305 N.C. 152, 289 S.E.2d 380 (1982).

Where defendant failed to show that there was a "sudden emergencies" exception to G.S. 20-146 that allowed for a jury instruction on sudden emergency, and where defendant also failed to establish that the emergency which necessitated her sudden action of swerving into another lane of traffic in order to avoid a car that stopped short in front of her was not created by negligence on her part, there was no entitlement to such an instruction under G.S. 15A-1231. State v. Glover, 156 N.C. App. 139, 575 S.E.2d 835, 2003 N.C. App. LEXIS 78 (2003).

Driving to Left to Avoid Collision. — Where bus driver cut his bus to the left and crossed the centerline in an effort to avoid collision, such act was not negligence. Ingram v. Smoky Mt. Stages, Inc., 225 N.C. 444, 35 S.E.2d 337 (1945).

Burden on Plaintiff to Establish Negligence. — Where plaintiff's evidence left in speculation and conjecture the determinative fact of whether defendant's car was being driven on the wrong side of the highway at the time of the collision, defendant's motion to nonsuit was properly granted, the burden being on plaintiff to establish defendant's negligence. Cheek v. Barnwell Whse. & Brokerage Co., 209 N.C. 569, 183 S.E. 729 (1936).

Competency of Circumstantial Evidence. — Where evidence that defendant was driving to his left of the center of the highway when a collision occurred is circumstantial, i.e., based on testimony as to the physical facts at the scene, such evidence may be sufficiently strong to infer negligence and take the cause to the jury. Lassiter v. Williams, 272 N.C. 473, 158 S.E.2d 593 (1968).

Collision with Garbage Truck. — In negligence action in which plaintiff's van collided with defendant's garbage truck, despite the fact truck had stopped, trial judge properly submitted the issue of whether defendant violated this section, since there was evidence that while the garbage truck was stopped, the engine was left running. Smith v. Pass, 95 N.C. App. 243, 382 S.E.2d 781 (1989).

Probable Cause to Stop Vehicle. — Where a police investigator saw defendant's vehicle commit a violation of G.S. 20-146(a), the traffic stop was proper under U.S. Const., Amend. IV, as it was based on a readily observed traffic violation and it was supported by probable cause. State v. Baublitz, 172 N.C. App. 801, 616 S.E.2d 615, 2005 N.C. App. LEXIS 1778 (2005).

Evidence Held Sufficient. — Testimony of witnesses who were at the scene of the collision almost immediately after it occurred to the effect that they saw glass, flour and mud on the south side of the highway, intestate's right side and defendant's left side of the highway, and nothing of the kind on the opposite side of the highway, the north side, was evidence that defendant's truck was being operated in violation of this section and §§ 20-147 and 20-148, which required defendant to drive his truck on his right side of the highway and to give plaintiff's coupe half of the main-traveled portion of the roadway as nearly as possible, and that this violation proximately caused the collision which resulted in the death of plaintiff's intestate. Wyrick v. Ballard & Ballard Co., 224 N.C. 301, 29 S.E.2d 900 (1944).

Testimony of passenger in truck driven by intestate to the effect that intestate was driving on his right side of the road in an ordinary manner, that defendant's tractor with trailer-tanker was traveling in the opposite direction, and that the truck hit the trailer-tanker which was sticking out to its left as the tractor was being driven to its right of the road, resulting in intestate's death, was sufficient to support an inference that defendant violated this section in failing to drive his tractor-trailer on his right half of the highway, proximately causing the death of plaintiff's intestate, and compulsory nonsuit was error. Gladden v. Setzer, 230 N.C. 269, 52 S.E.2d 804 (1949).

For case holding that blood spots indicated that when defendant's car struck deceased its left wheels were on or over the center of the highway in violation of this section, see State v. Phelps, 242 N.C. 540, 89 S.E.2d 132 (1955).

Where plaintiff passenger was injured in a head-on collision of two automobiles on a dirt road in the dust raised by a third car, testimony of witnesses that at least a part of each driver's vehicle was to the left of his center of the highway would take the issue as to the negligence of each driver to the jury. Forte v. Goodwin, 261 N.C. 608, 135 S.E.2d 552 (1964).

Plaintiff in a wrongful death action offered sufficient evidence, including physical evidence of tire marks at the scene and the defendant's statements to the investigating officer, to support a jury finding that defendant was driving on the left-hand side of the street when he struck plaintiff's intestate. Smith v. Kilburn, 13 N.C. App. 449, 186 S.E.2d 214, cert. denied, 281 N.C. 155, 187 S.E.2d 586 (1972).

For additional case holding evidence sufficient to show violation of section, see State v. Goins, 233 N.C. 460, 64 S.E.2d 289 (1951).

Trial court erred in refusing to instruct the jury that defendant violated G.S. 20-146(d) by failing to keep his vehicle in his lane of travel because plaintiff's evidence showed that defendant crossed the center line and struck plaintiff in the opposing lane of traffic; it was irrelevant that defendant did not intentionally drive his car across the center line, but rather the crucial inquiry was whether defendant's action culminating in the accident were negligent, and plaintiff's evidence that defendant was traveling at an unsafe speed for the icy road conditions at the time allowed a jury to find that defendant's negligence caused him to lose control of his vehicle. Sobczak v. Vorholt, 181 N.C. App. 629, 640 S.E.2d 805, 2007 N.C. App. LEXIS 403 (2007).

For case holding evidence insufficient to show an intentional, willful or wanton violation, see State v. Hancock, 248 N.C. 432, 103 S.E.2d 491 (1958); State v. Eller, 256 N.C. 706, 124 S.E.2d 806 (1962).

Instruction Held Without Error. — An instruction that the violation of statutes regulating the operation of motor vehicles and the conduct of pedestrians on the highway would constitute negligence per se, and would be actionable if it was the proximate cause of injury, was without error when the instruction was applied solely to this section and G.S. 20-174, prescribing that vehicles should be operated on the right-hand side of the highway and that warning should be given pedestrians. Williams v. Woodward, 218 N.C. 305, 10 S.E.2d 913 (1940).

Sufficiency of Instruction. — Although a trial judge instructed the jury that every person was under a duty to follow standards of conduct established by a safety statute and that a person's failure to do so was negligence in and of itself, the only specific safety statute on which he then charged the jury was G.S. 20-141(a), to the effect that no person should drive a vehicle at a speed greater than was reasonable under the conditions then existing; this instruction was insufficient to act as substitute for a charge that defendant violated G.S. 20-146 because the jury was limited to finding negligence on the basis of defendant's violation of a safety statute if it found that he was driving his vehicle at a speed greater than was reasonable and prudent at the time instead of permitting the jury to consider, alternatively, that defendant was negligent because of actions that caused his vehicle to cross the center line and collide with plaintiff's car in plaintiff's lane of travel. Sobczak v. Vorholt, 181 N.C. App. 629, 640 S.E.2d 805, 2007 N.C. App. LEXIS 403 (2007).

Applied in Hancock v. Wilson, 211 N.C. 129, 189 S.E. 631 (1937); Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384 (1939). See also State v. Toler, 195 N.C. 481, 142 S.E. 715 (1928); State v. Durham, 201 N.C. 724, 161 S.E. 398 (1931); Queen City Coach Co. v. Lee, 218 N.C. 320, 11 S.E.2d 341 (1940); Horton v. Peterson, 238 N.C. 446, 78 S.E.2d 181 (1953); State v. Turberville, 239 N.C. 25, 79 S.E.2d 359 (1953); Combs v. United States, 122 F. Supp. 280 (E.D.N.C. 1954); Hennis Freight Lines v. Burlington Mills Corp., 246 N.C. 143, 97 S.E.2d 850 (1957); Kirkman v. Baucom, 246 N.C. 510, 98 S.E.2d 922 (1957); Parker v. Flythe, 256 N.C. 548, 124 S.E.2d 530 (1962); Hardin v. American Mut. Fire Ins. Co., 261 N.C. 67, 134 S.E.2d 142 (1964); Bass v. Roberson, 261 N.C. 125, 134 S.E.2d 157 (1964); Threadgill v. Kendall, 262 N.C. 751, 138 S.E.2d 625 (1964); Stewart v. Gallimore, 265 N.C. 696, 144 S.E.2d 862 (1965); Atwood v. Holland, 267 N.C. 722, 148 S.E.2d 851 (1966); State v. Massey, 271 N.C. 555, 157 S.E.2d 150 (1967); State v. Moses, 272 N.C. 509, 158 S.E.2d 617 (1968); Broadnax v. Deloatch, 8 N.C. App. 620, 175 S.E.2d 314 (1970); Asbury v. City of Raleigh, 48 N.C. App. 56, 268 S.E.2d 562 (1980); Belk v. Peters, 63 N.C. App. 196, 303 S.E.2d 641 (1983); Tate v. Christy, 114 N.C. App. 45, 440 S.E.2d 858 (1994).

Cited in Maddox v. Brown, 232 N.C. 542, 61 S.E.2d 613 (1950); White v. Cason, 251 N.C.

646, 111 S.E.2d 887 (1960); Brewer v. Powers Trucking Co., 256 N.C. 175, 123 S.E.2d 608 (1962); Wagner v. Eudy, 257 N.C. 199, 125 S.E.2d 598 (1962); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964); State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965); Hunt v. Carolina Truck Supplies, Inc., 266 N.C. 314, 146 S.E.2d 84 (1966); Champion v. Waller, 268 N.C. 426, 150 S.E.2d 783 (1966); Brewer v. Harris, 279 N.C. 288, 182 S.E.2d 345 (1971); State v. Boone, 16 N.C. App. 368, 192 S.E.2d 13 (1972); State v. Hefler, 60 N.C. App. 466, 299 S.E.2d 456 (1983); State v. Ealy, 94 N.C. App. 707, 381 S.E.2d 185 (1989); Body ex rel. Body v. Varner, 107 N.C. App. 219, 419 S.E.2d 208 (1992); Reynolds v. United States, 805 F. Supp. 336 (W.D.N.C. 1992); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996); State v. Jones, 353 N.C. 159, 538 S.E.2d 917, 2000 N.C. LEXIS 894 (2000).

§ 20-146.1. Operation of motorcycles.

(a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(b) Motorcycles shall not be operated more than two abreast in a single lane. (1965, c. 909; 1973, c. 1330, s. 14; 1975, c. 786.)

CASE NOTES

Applied in Burrow v. Jones, 51 N.C. App. 549, 277 S.E.2d 97 (1981).

§ 20-146.2. Rush hour traffic lanes authorized.

(a) HOV Lanes. — The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons. Where access restrictions are applied on HOV lanes through designated signing and pavement markings, vehicles shall only cross into or out of an HOV lane at designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions shall not apply to motorcycles or vehicles designed to transport 15 or more passengers, regardless of the actual number of occupants. HOV lane restrictions shall not apply to emergency vehicles. As used in this subsection, the term "emergency vehicle" means any law enforcement, fire, police, or other government vehicle, and any public and privately owned ambulance or emergency service vehicle, when responding to an emergency.

(a1) Transitway Lanes. — The Department of Transportation may designate one or more travel lanes as a transitway on streets and highways on the State Highway System and cities may designate one or more travel lanes as a transitway on streets on the Municipal Street System. Transitways shall be reserved for public transportation vehicles as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When transitways have been designated, and they have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated transportation vehicles as determined by the Department or the city having jurisdiction.

(b) Temporary Peak Traffic Shoulder Lanes. — The Department of Transportation may modify, upgrade, and designate shoulders of controlled access facilities and partially controlled access facilities as temporary travel lanes during peak traffic periods. When these shoulders have been appropriately marked, it shall be unlawful to use these shoulders for stopping or emergency parking. Emergency parking areas shall be designated at other appropriate areas, off these shoulders, when available.

(c) Directional Flow Peak Traffic Lanes. — The Department of Transportation may designate travel lanes for the directional flow of peak traffic on streets and highways on the State Highway System and cities may designate travel lanes for the directional flow of peak traffic on streets on the Municipal Street System. These travel lanes may be designated for time periods by the agency controlling the streets and highways. (1987, c. 547, s. 1; 1999-350, s. 1; 2003-184, s. 5.)

§ 20-147. Keep to the right in crossing intersections or railroads.

In crossing an intersection of highways or the intersection of a highway by a railroad right-of-way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the highway unless such right side is obstructed or impassable. (1937, c. 407, s. 109.)

CASE NOTES

Exercise of Ordinary Care Required at Intersections. — The duties of motorists, both those on dominant and those on servient highways, when approaching, entering or traversing intersections, require that each driver exercise ordinary care under the particular circumstances in which he finds himself, and that the failure to do so can constitute actionable negligence where injury results. Murrell v. Jennings, 15 N.C. App. 658, 190 S.E.2d 686 (1972).

Violation of Section As Negligence. — A motorist is required by statute to remain on the right side of the highway at a crossing or intersection, and violation of this statute is negligence. Crotts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957).

Applied in Stutts v. Burcham, 271 N.C. 176, 155 S.E.2d 742 (1967).

Cited in Hardy v. Tesh, 5 N.C. App. 107, 167 S.E.2d 848 (1969); Rector v. James, 41 N.C. App. 267, 254 S.E.2d 633 (1979).

§ 20-147.1. Passenger vehicle towing other vehicles to keep right.

Whenever a noncommercial passenger vehicle as defined in G.S. 20-4.01(27)g. is towing another vehicle as defined in G.S. 20-4.01(49), the driver of the towing vehicle shall at all times cause that vehicle to travel on the right half of the highway, and upon any highway having four or more lanes for moving traffic and providing for two-way movement of traffic, the vehicle shall not be driven in the left-most lane of the right half of the highway except when overtaking and passing another vehicle proceeding in the same direction, when preparing for a left turn, or the right lanes are obstructed or impassable. These towing vehicles shall also comply with all signage for vehicles of three or more axles erected pursuant to G.S. 20-146(d)(3). (2004-124, s. 30.6(a); 2004-199, s. 56.)

§ 20-148. Meeting of vehicles.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one half of the main-traveled portion of the roadway as nearly as possible. (1937, c. 407, s. 110.)

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under corresponding provisions of former law.*

This section prescribes a standard of care for a motorist and the standard fixed by the legislature is absolute. Bondurant v. Mastin, 252 N.C. 190, 113 S.E.2d 292 (1960); McGinnis v. Robinson, 258 N.C. 264, 128 S.E.2d 608 (1962).

For case holding this section irrelevant where collision occurred on a three-lane highway, see State v. Duncan, 264 N.C. 123, 141 S.E.2d 23 (1965).

Driver Has Right to Assume That Others Will Observe the Law. — The driver of an automobile who is himself observing the law as set out in this section in meeting and passing an automobile proceeding in the opposite direction has the right ordinarily to assume that the driver of the approaching automobile will also observe the rule and avoid a collision. Lucas v. White, 248 N.C. 38, 102 S.E.2d 387 (1958).

When the driver of one of two automobiles is not observing the rule of this section, as the automobiles approach each other the other driver may assume that before the automobiles meet the driver of the approaching automobile will turn to his right, so that the two automobiles may pass each other in safety. Shirley v. Ayers, 201 N.C. 51, 158 S.E. 840 (1931). See also, James v. Carolina Coach Co., 207 N.C. 742, 178 S.E. 607 (1935); Hancock v. Wilson, 211 N.C. 129, 189 S.E. 631 (1937); Hoke v. Atlantic Greyhound Corp., 227 N.C. 412, 42 S.E.2d 593 (1947); Morgan v. Saunders, 236 N.C. 162, 72 S.E.2d 411 (1952).

But Such Right Is Not Absolute. — Ordinarily, a motorist has the right to assume that the driver of a vehicle approaching on the same side or on his left-hand side will yield half of the highway or turn out in time to avoid a collision, but this right is not absolute. It may be qualified by the particular circumstances existing at the time. Brown v. Southern Paper Prods. Co., 222 N.C. 626, 24 S.E.2d 334 (1943); Hoke v. Atlantic Greyhound Corp., 227 N.C. 412, 42 S.E.2d 593 (1947); Lamm v. Gardner, 250 N.C. 540, 108 S.E.2d 847 (1959).

The right of a motorist to assume that the driver of a negligently operated automobile will observe the law in time to avoid collision is not absolute, but may be qualified by the particular circumstances at the time, such as the proximity and movement of the other vehicle and the condition and width of the road. Morgan v. Saunders, 236 N.C. 162, 72 S.E.2d 411 (1952); Lamm v. Gardner, 250 N.C. 540, 108 S.E.2d 847 (1959).

The right of a motorist to assume that vehicles approaching from the opposite direction will remain on their right side of the highway is not absolute, and when a motorist approached a machine emitting a chemical fog obscuring the entire highway, he could not rely on such assumption when a reasonably prudent man might reasonably anticipate that a motorist might be on the highway meeting him and might be unable to keep safely on his side of the highway on account of the fog. Moore v. Town of Plymouth, 249 N.C. 423, 106 S.E.2d 695 (1959).

The rule that a motorist traveling on his right or seasonably turning thereto has the right to assume that a car approaching from the opposite direction will comply with this section and turn to its right in time to avoid a collision not applicable to a motorist who ran completely off the road to his right, lost control, and hit a car standing still completely off the hard surface on its left side of the highway with its lights on, since the rule merely absolves a motorist from blame if he continues at a reasonable rate of speed in his line of travel in reliance on the assumption, but does not relieve him from the duty of knowing the position of his car on the highway from his own observation. Webb v. Hutchins, 228 N.C. 1, 44 S.E.2d 350 (1947).

And Driver Must Exercise Due Care. — Notwithstanding the right of a motorist to so assume, still this does not lessen his duty to conform to the requirement of exercising due care under the existing circumstances, that is, to conform to the rule of the reasonably prudent man. Sebastian v. Horton Motor Lines, 213 N.C. 770, 197 S.E. 539 (1938); Hoke v. Atlantic Greyhound Corp., 227 N.C. 412, 42 S.E.2d 593 (1947).

A motorist, although in his proper lane of traffic, must exercise ordinary care to avoid injuring persons or vehicles in his lane if he discovers their peril or in the exercise of ordinary care could discover it. It is his duty to slow down and have his vehicle under control and to pull over on the shoulder, if by doing so, he can avoid injury. Rundle v. Wyrick, 194 F. Supp. 630 (M.D.N.C. 1961), aff'd sub nom Rundle v. Grubb Motor Lines, 300 F.2d 333 (4th Cir. 1962).

Violation of this section is negligence per se. Hobbs v. Queen City Coach Co., 225 N.C. 323, 34 S.E.2d 211 (1945); Boyd v. Harper, 250 N.C. 334, 108 S.E.2d 598 (1959); McCombs v. McLean Trucking Co., 252 N.C. 699, 114 S.E.2d 683 (1960); Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960); Carswell v. Lackey, 253 N.C. 387, 117 S.E.2d 51 (1960); Anderson v. Webb, 267 N.C. 745, 148 S.E.2d 846 (1966).

And Constitutes Actionable Negligence When It Proximately Causes Injury. — A violation of this section would be negligence per se, and if such violation were the proximate cause of the injury it would be actionable. Wallace v. Longest, 226 N.C. 161, 37 S.E.2d 112 (1946); Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946); McGinnis v. Robinson, 258 N.C. 264, 128 S.E.2d 608 (1962); Anderson v. Webb, 267 N.C. 745, 148 S.E.2d 846 (1966).

A violation of this section is negligence per se, and, when proximate cause of injury or damage is shown, such violation constitutes actionable negligence. Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Lassiter v. Williams, 272 N.C. 473, 158 S.E.2d 593 (1968).

A violation of this section constitutes negligence, although such negligence is not actionable unless it is the proximate cause of the injuries complained of. Davis v. Imes, 13 N.C. App. 521, 186 S.E.2d 641 (1972).

A safety statute, such as this section, is pertinent when, and only when, there is evidence tending to show a violation thereof proximately caused the alleged injuries or death. State v. Duncan, 264 N.C. 123, 141 S.E.2d 23 (1965).

Proximate cause is a matter for consideration of the jury under the law as declared by the court. Wallace v. Longest, 226 N.C. 161, 37 S.E.2d 112 (1946); McCombs v. McLean Trucking Co., 252 N.C. 699, 114 S.E.2d 683 (1960).

Where evidence tended to show that driver of defendant's truck, in meeting pickup truck in which plaintiffs were riding, was not passing on his right side of highway, and was not giving oncoming truck at least one half of the main-traveled portion of the roadway as nearly as possible, in violation of the provisions of this section, the question of whether defendant's truck was on left side of highway and, if so, whether this was the proximate cause of the collision would be for jury. Wallace v. Longest, 226 N.C. 161, 37 S.E.2d 112 (1946).

Prima Facie Case of Actionable Negligence Is Made Out by Evidence that Defendant Was Driving Left of Center. — Where plaintiff sues for injuries or damages caused by an automobile collision and offers evidence showing that defendant was driving left of the center of the highway when the collision occurred, such evidence makes out a prima facie case of actionable negligence. Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Lassiter v. Williams, 272 N.C. 473, 158 S.E.2d 593 (1968).

But Defendant May Rebut Such Inference. — Evidence in an action for damages for injuries sustained in a collision, tending to show that the collision occurred when defendant was driving to his left of the center of the highway makes out a prima facie case of actionable negligence. The defendant, of course, may rebut the inference arising from such evidence by showing that he was on the wrong side of the road from a cause other than his own negligence. Anderson v. Webb, 267 N.C. 745, 148 S.E.2d 846 (1966).

When Violation Constitutes Culpable Negligence. — The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Roop, 255 N.C. 607, 122 S.E.2d 363 (1961).

Competency of Circumstantial Evidence. — Where evidence that defendant was driving to the left of the center of the highway when a collision occurred is circumstantial, i.e., based on testimony as to the physical facts at the scene, such evidence may be sufficiently strong to infer negligence and take the case to the jury. Lassiter v. Williams, 272 N.C. 473, 158 S.E.2d 593 (1968).

Evidence Held Sufficient. — Evidence tending to show that the driver of a truck was traveling 35 to 40 miles per hour in an early morning fog which limited visibility to 100 or 125 feet, that he had overtaken a vehicle traveling in the same direction and was attempting to pass such vehicle 250 or 300 feet before reaching a curve, and that he collided with plaintiff's car which approached from the opposite direction was held sufficient to be submitted to the jury on the issue of the negligence of the driver of the truck. Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949).

For additional cases holding evidence sufficient to show violation of this section, see State v. Wooten, 228 N.C. 628, 46 S.E.2d 868 (1948); Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949).

As to evidence showing failure to yield one half of roadway, see State v. Goins, 233 N.C. 460, 64 S.E.2d 289 (1951).

Instructions Upheld. — In an action for damages caused by the collision of two motor vehicles, a charge that "If plaintiff has satisfied you from the evidence and by the greater weight that on this occasion the driver of the defendant's truck at the time of the collision failed to drive the defendant's truck upon the right half of the highway, then that would constitute negligence on the part of defendant's driver" was in accord with this section. Hopkins v. Colonial Stores, Inc., 224 N.C. 137, 29 S.E.2d 455 (1944), overruled on other grounds in Jones v. Bailey, 246 N.C. 599, 99 S.E.2d 768 (1957).

An instruction on the right of a motorist to assume that an approaching vehicle would yield one half the highway in passing was held not objectionable in limiting such right to a motorist himself observing the requirements of the statute, when such instruction, considered in context, was to the effect that a motorist was not entitled to rely on such assumption if such motorist was himself then driving on his left side of the highway and was thereby contributing to the hazard and emergency that existed immediately prior to the collision. Blackwell v. Lee, 248 N.C. 354, 103 S.E.2d 703 (1958).

Instruction Held Erroneous. — An instruction confusing the provisions of G.S. 20-149, pertaining to the duty of the driver of any vehicle overtaking another vehicle proceeding in the same direction, with the provisions of this section, prescribing the respective duties of drivers of vehicles proceeding in opposite directions when meeting, was prejudicial error. Lookabill v. Regan, 245 N.C. 500, 96 S.E.2d 421 (1957).

Applied in Asbury v. City of Raleigh, 48 N.C. App. 56, 268 S.E.2d 562 (1980).

Cited in Harris v. Bridges, 46 N.C. App. 207, 264 S.E.2d 804 (1980); Williams v. Hall, 100 N.C. App. 655, 397 S.E.2d 767 (1990); Reynolds v. United States, 805 F. Supp. 336 (W.D.N.C. 1992); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-149. Overtaking a vehicle.

(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G.S. 20-150.1.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle while being lawfully overtaken on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

Failure to comply with this subsection:

(1) Is a Class 1 misdemeanor when the failure is the proximate cause of a collision resulting in serious bodily injury.

(2) Is a Class 2 misdemeanor when the failure is the proximate cause of a collision resulting in bodily injury or property damage.

(3) Is, in all other cases, an infraction. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247; 1973, c. 1330, s. 15; 1995, c. 283, s. 1.)

Local Modification. — Durham, Mecklenburg (except as to City of Charlotte), Vance and Wake, as to subsection (a): 1953, c. 772; City of Charlotte: 2001-79.

CASE NOTES

I. In General.
II. Duty of Driver of Overtaken Vehicle.

I. IN GENERAL.

***Editor's Note.** — Some of the cases cited below were decided under corresponding provisions of former law.*

Purpose of Section. — This section was enacted for the protection of the public upon the roads and highways of the State. Wolfe v. Independent Coach Line, 198 N.C. 140, 150 S.E. 876 (1929).

The principal purpose of this section is the protection of the "overtaken vehicle" and its occupants. McGinnis v. Robinson, 252 N.C. 574, 114 S.E.2d 365 (1960).

The object of this section is not only the protection of the overtaken vehicle and its occupants, but also the protection of the passing vehicle and its occupants. Boykin v. Bissette, 260 N.C. 295, 132 S.E.2d 616 (1963).

Section Inapplicable Where Forward Ve-

hicle Is in Left-Turn Lane. — The rule of the road contained in this section does not apply where there are three lanes available to the motorist and the forward vehicle is in the left-turn lane while the overtaking vehicle is in the through-traffic lane. Anderson v. Talman Office Supplies, Inc., 234 N.C. 142, 66 S.E.2d 677 (1951). See also, Anderson v. Talman Office Supplies, Inc., 236 N.C. 519, 73 S.E.2d 141 (1952).

Or Where Vehicles Are Proceeding in Opposite Directions. — Absent unusual circumstances, this section has no bearing where collision is between vehicles proceeding in opposite directions. McGinnis v. Robinson, 252 N.C. 574, 114 S.E.2d 365 (1960).

A person walking along a public highway pushing a handcart is a pedestrian within the purview of G.S. 20-174(d) and is not a driver of a vehicle within the meaning of G.S. 20-146 and this section. Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948).

Common-law rule of ordinary care applies. Cowan v. Murrows Transf., Inc., 262 N.C. 550, 138 S.E.2d 228 (1964).

Two-foot clearance requirement is a minimum requirement by the express terms of the statute. Murchison v. Powell, 269 N.C. 656, 153 S.E.2d 352 (1967).

Which Applies to Overtaking and Passing Another Vehicle. — The two-foot clearance required by this section applies to the overtaking and passing of another vehicle, not a horse subject to fright by a sudden noise. Murchison v. Powell, 269 N.C. 656, 153 S.E.2d 352 (1967).

Subsection (a) of this section does not require that a vehicle must pass at least two feet to the left of the centerline of the highway in passing another vehicle traveling in the same direction, but only that it pass at least two feet to the left of the other vehicle. Eason v. Grimsley, 255 N.C. 494, 121 S.E.2d 885 (1961).

Rule of the road set out in § 20-152 does not apply where one motorist is overtaking and passing another, as authorized by this section, or where there are two lanes available to the motorist and the forward vehicle is in the outer lane and the overtaking vehicle is in the passing lane. Maddox v. Brown, 232 N.C. 542, 61 S.E.2d 613 (1950).

As to duty of driver of overtaking vehicle to give audible warning and effect of his failure to do so under subsection (b) of this section as it stood before the 1973 amendment, see Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951); Ward v. Cruse, 236 N.C. 400, 72 S.E.2d 835 (1952); Lyerly v. Griffin, 237 N.C. 686, 75 S.E.2d 730 (1953); Sheldon v. Childers, 240 N.C. 449, 82 S.E.2d 396 (1954); Tallent v. Talbert, 249 N.C. 149, 105 S.E.2d 426 (1958); Schloss v. Hallman, 255 N.C. 686, 122 S.E.2d 513 (1961); Boykin v. Bissette, 260 N.C. 295, 132 S.E.2d 616 (1963); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964); Cowan v. Murrows Transf., Inc., 262 N.C. 550, 138 S.E.2d 228 (1964); Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Lowe v. Futrell, 271 N.C. 550, 157 S.E.2d 92 (1967); Kinney v. Goley, 4 N.C. App. 325, 167 S.E.2d 97, reaffirmed on rehearing, 6 N.C. App. 182, 169 S.E.2d 525 (1969).

There is no statutory requirement that a driver sound his horn when he begins to pass; thus, a driver's failure to sound his horn does not constitute negligence per se; rather, he is subject to the common-law duty to use reasonable care. Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

Absent a statutory requirement, a motorist is only required to sound his horn when reasonably necessary to give warning. Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

Duty on Approaching Stopped Truck. — Where driver of stopped truck standing on the right of the highway has given no clear signal of his intention to make a left turn, but merely has on the left rear and left fender a red light flashing on and off, the driver of an automobile approaching at night from the rear, in the exercise of ordinary care, is bound to approach with his automobile under control, so as to reduce his speed or stop, if necessary, to avoid injury. Weavil v. C.W. Myers Trading Post, Inc., 245 N.C. 106, 95 S.E.2d 533 (1956).

Contributory Negligence in Overtaking Forward Vehicle Failing to Signal Intention to Turn Left. — Even though forward driver fails to signal before making a left turn, the driver overtaking and passing the forward driver may be guilty of contributory negligence for not complying with this section. Lyerly v. Griffin, 237 N.C. 686, 75 S.E.2d 730 (1953).

Right to Pass to Right of Forward Vehicle Which Has Signaled Intention to Turn Left. — Where the driver of a preceding vehicle traveling in the same direction gives a clear signal of his intention to turn left into an intersecting road and leaves sufficient space to his right to permit the overtaking vehicle to pass in safety, the provisions of subsection (a) of this section do not apply, and the overtaking vehicle may pass to the right of the overtaken vehicle, but this rule does not relieve the driver of the overtaking vehicle of the duty of observing other pertinent statutes. Ward v. Cruse, 236 N.C. 400, 72 S.E.2d 835 (1952).

Notwithstanding the provisions of this statute, a motorist may, in the exercise of ordinary care, pass another vehicle, going in the same direction, on the right of the overtaken vehicle when the driver of that vehicle has given a clear signal of his intention to make a left turn and has left sufficient space to the right to permit the overtaking vehicle to pass in safety. This rule, however, does not mean that the act of passing on the right of a left-turning vehicle at an intersection may not be accomplished in such a manner as to constitute negligence. Ford v. Smith, 6 N.C. App. 539, 170 S.E.2d 548 (1969).

Generally, the overtaking driver is justified in proceeding along the right side of the highway in attempting to pass the forward vehicle where the driver of the latter gives a left-turn signal or pulls over to the left as though intending to make a left turn. Ford v. Smith, 6 N.C. App. 539, 170 S.E.2d 548 (1969).

Violation of Section as Negligence Per Se. — Violation of this section is negligence per se, entitling the person injured to his damages when there is a causal connection between the negligent act and the injury complained of. Wolfe v. Independent Coach Line, 198 N.C. 140, 150 S.E. 876 (1929).

A violation of subsection (a) of this section is negligence per se. Kleibor v. Colonial Stores, Inc., 159 F.2d 894 (4th Cir. 1947).

Violation of subsection (a) of this section is negligence and if such negligence was the proximate cause of plaintiff's injuries, defendant, nothing else appearing, is liable to plaintiff. Stovall v. Ragland, 211 N.C. 536, 190 S.E. 899 (1937).

A violation of subsection (a) of this section would be negligence per se and if injury proximately result therefrom, it would be actionable. Tarrant v. Pepsi-Cola Bottling Co., 221 N.C. 390, 20 S.E.2d 565 (1942); Clark v. Emerson, 245 N.C. 387, 95 S.E.2d 880 (1957).

Contributory Negligence Held Question for Jury. — Where the evidence tended to show that plaintiff's vehicle was following that of defendant, that defendant's truck slowed down and pulled to its left of the highway, that a person in the rear of the truck motioned plaintiff's driver to go ahead, and that as plaintiff's vehicle started to pass defendant's vehicle on its right, the driver of defendant's truck turned right to enter a private driveway and the two vehicles collided, nonsuit on the ground of contributory negligence was erroneously entered, since whether plaintiff's driver was guilty of contributory negligence in attempting to pass defendant's vehicle on the right was a question for the determination of the jury under the circumstances. Levy v. Carolina Aluminum Co., 232 N.C. 158, 59 S.E.2d 632 (1950).

Evidence Held Sufficient to Raise Issue of Last Clear Chance. — Where the evidence tended to show that plaintiff, in order to avoid striking a chicken standing on the hard surface of the highway, drove his automobile gradually to the left, so that his car was traveling in about the center of the highway at the time of the accident in question, and that a bus belonging to defendant was traveling in the same direction and hit plaintiff's car when the bus attempted to pass, it was held that, conceding plaintiff was negligent in driving to the left without giving any signal or ascertaining if the car could be driven to the left in safety, defendant's motion to nonsuit was erroneously granted, since the pleadings and evidence were sufficient to raise the issue of last clear chance in tending to establish defendant's negligence in failing to keep a safe distance between the vehicles and in failing to take the precautions and give the signals required by this section for passing cars on the highway. Morris v. Seashore Transp. Co., 208 N.C. 807, 182 S.E. 487 (1935).

Instructions Held Erroneous. — In an action involving alleged negligence of defendant in failing to yield to plaintiff's intestate one half of highway as respective vehicles, traveling in opposite directions, passed each other, an instruction embracing the statutory duty of a driver of a vehicle overtaking and passing another vehicle traveling in the same direction was prejudicial error. Lookabill v. Regan, 245 N.C. 500, 96 S.E.2d 421 (1957).

Where the uncontroverted evidence supported a finding that the driver of defendant's car violated subsection (a) of this section as to the duty of the driver of an overtaking vehicle, but there was neither allegation nor evidence that such violation was a proximate cause of the collision, an instruction based on that subsection was erroneous and prejudicial. McGinnis v. Robinson, 252 N.C. 574, 114 S.E.2d 365 (1960).

Applied in State v. Holbrook, 228 N.C. 620, 46 S.E.2d 843 (1948); Clifton v. Turner, 257 N.C. 92, 125 S.E.2d 339 (1962); Pate v. Hair, 208 F. Supp. 455 (W.D.N.C. 1962); Bass v. Roberson, 261 N.C. 125, 134 S.E.2d 157 (1964); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965); Simpson v. Lyerly, 265 N.C. 700, 144 S.E.2d 870 (1965); Welch v. Jenkins, 271 N.C. 138, 155 S.E.2d 763 (1967); Almond v. Bolton, 272 N.C. 78, 157 S.E.2d 709 (1967).

Cited in Citizens Nat'l Bank v. Phillips, 236 N.C. 470, 73 S.E.2d 323 (1952); Harris v. Davis, 244 N.C. 579, 94 S.E.2d 649 (1956); Rudd v. Stewart, 255 N.C. 90, 120 S.E.2d 601 (1961); Porter v. Philyaw, 204 F. Supp. 285 (W.D.N.C. 1962); Caudill v. Nationwide Mut. Ins. Co., 264 N.C. 674, 142 S.E.2d 616 (1965); Inman v. Harper, 2 N.C. App. 103, 162 S.E.2d 629 (1968); Bateman v. Elizabeth City State College, 5 N.C. App. 168, 167 S.E.2d 838 (1969); Bell v. Wallace, 32 N.C. App. 370, 232 S.E.2d 305 (1977); Davis v. Gamble, 55 N.C. App. 617, 286 S.E.2d 629 (1982); Whitley v. Owens, 86 N.C. App. 180, 356 S.E.2d 815 (1987).

II. DUTY OF DRIVER OF OVERTAKEN VEHICLE.

***Editor's Note.** — Some of the cases treated below were decided under corresponding provisions of former law.*

Exemption of Police Vehicles in Case of "Running Roadblock." — The provision of former G.S. 20-151 requiring the driver of a vehicle about to be overtaken to yield the right-of-way did not apply to a highway patrolman who set up a "running roadblock" in an attempt to stop a stolen car being pursued by another patrolman, since an exemption for police vehicles from that section in case of a running roadblock could be reasonably implied. Collins v. Christenberry, 6 N.C. App. 504, 170 S.E.2d 515 (1969).

Duty to Turn to Right. — The driver of an automobile, upon the signal of a faster car approaching from the rear, must turn to the right so that the other may pass to his left, when the conditions existing there at the time are reasonably safe to permit the other to pass. Dreher v. Divine, 192 N.C. 325, 135 S.E. 29 (1926).

Duty Not to Accelerate. — Where driver was driving in the proper lane at approximately the maximum lawful speed, but when an overtaking car drew abreast of his car it was apparent that the overtaking vehicle was in a position of peril by reason of the near approach of a meeting vehicle, and the driver of car being overtaken did not reduce speed but accelerated and raced the passing car, under the circumstances thus presented, it was the duty of the driver of the car being overtaken not to increase the speed of his car until the overtaken car had completely passed. Rouse v. Jones, 254 N.C. 575, 119 S.E.2d 628 (1961).

Driver of an autotruck is not held to the same degree of care in observing those who may wish to pass him coming from the rear, as in front, and is not required to turn to the right for such purpose, unless he is appraised by the one who wishes to pass, by proper signal, of his intention to do so. Dreher v. Divine, 192 N.C. 325, 135 S.E. 29 (1926).

Duty of Driver Passing from Rear. — The driver of an automobile who wishes to pass another ahead of him must keep his automobile under control, so as to avoid a collision if the driver ahead of him does not hear his signals or is not aware of his intention to pass, or if the condition of the road makes it unsafe not only to himself, but to those who are driving from the opposite direction. Dreher v. Divine, 192 N.C. 325, 135 S.E. 29 (1926).

Culpable Negligence. — One who violated the provisions of former statute requiring driver to give way to overtaking vehicles, not intentionally or recklessly, but merely through a failure to exercise due care, and thereby proximately caused a death, would not be culpably negligent unless in the light of the attendant circumstances his negligent act was likely to result in death or bodily harm. State v. Stansell, 203 N.C. 69, 164 S.E. 580 (1932).

As to proof of violation in trial for resulting crime, see State v. Rountree, 181 N.C. 535, 106 S.E. 669 (1921); State v. Jessup, 183 N.C. 771, 111 S.E. 523 (1922).

Violation Not Evidence of Specific Intent to Assault. — Since the intentional driving of a motor vehicle on the wrong side of the road in disregard of former statutory provisions was malum prohibitum, not malum in se, the performance of this unlawful act was not evidence of a specific intent to commit an assault. State v. Rawlings, 191 N.C. 265, 131 S.E. 632 (1926).

Submission to Jury Required. — Where there was evidence that plaintiff, desiring to pass a truck on the highway going in the same direction, blew his horn, and that the driver of the truck heard the signal, but instead of driving to the right of the center of the road to allow plaintiff to pass on the left, drove to the left and stopped or came almost to a stop, and that plaintiff, thinking that the truck was going to stop, and having his car under control, attempted to pass on the right, when the truck suddenly turned to the right, forcing plaintiff to turn to the right to avoid hitting the truck and causing plaintiff's car to run off embankment on the right of the road, resulting in injury, the evidence should have been submitted to the jury upon issues of negligence, contributory negligence and damages. Stevens v. Rostan, 196 N.C. 314, 145 S.E. 555 (1928).

Where the driver of an automobile violated the statutes by turning to the right to avoid a motorcycle traveling in the same direction upon a public road, and collided therewith, and an action was brought to recover damages therefor, and the evidence was conflicting as to whether the motorcycle was unexpectedly turned out in the wrong direction, resulting in the injury, the question of proximate cause depended upon whether the driver of the automobile acted with reasonable prudence under the circumstances to avoid the injury, or whether the collision was caused by the wrongful and unexpected act of the one on the motorcycle. Cooke v. Jerome, 172 N.C. 626, 90 S.E. 767 (1916).

The trial judge did not err in failing to charge the jury on the defendant's failure to yield to an overtaking vehicle, where there was no evidence presented that indicated that the other driver ever attempted to pass or to overtake the defendant once car chase had begun. Hord v. Atkinson, 68 N.C. App. 346, 315 S.E.2d 339 (1984).

§ 20-150. Limitations on privilege of overtaking and passing.

(a) The driver of a vehicle shall not drive to the left side of the center of a highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of 500 feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer. For the purposes of this section the words "intersection of highway" shall be defined and limited to intersections designated and marked by the Department of Transportation by appropriate signs, and street intersections in cities and towns.

(d) The driver of a vehicle shall not drive to the left side of the centerline of a highway upon the crest of a grade or upon a curve in the highway where such centerline has been placed upon such highway by the Department of Transportation, and is visible.

(e) The driver of a vehicle shall not overtake and pass another on any portion of the highway which is marked by signs, markers or markings placed by the Department of Transportation stating or clearly indicating that passing should not be attempted.

(f) The foregoing limitations shall not apply upon a one-way street nor to the driver of a vehicle turning left in or from an alley, private road, or driveway. (1937, c. 407, s. 112; 1955, c. 862; c. 913, s. 2; 1957, c. 65, s. 11; 1969, c. 13; 1973, c. 507, s. 5; c. 1330, s. 16; 1977, c. 464, s. 34; 1979, c. 472.)

CASE NOTES

I. In General.
II. Passing at Railway Grade Crossings or Intersections.

I. IN GENERAL.

Editor's Note. — *Some of the cases cited below were decided under corresponding provisions of former law.*

Purpose of Section. — The manifest purpose of this section is to promote safety in the operation of automobiles on the highways and not to obstruct vehicular traffic. Lawson v. Benton, 272 N.C. 627, 158 S.E.2d 805 (1968).

This safety statute must be given a reasonable and realistic interpretation to effect the legislative purpose. Lawson v. Benton, 272 N.C. 627, 158 S.E.2d 805 (1968).

This section applies only to vehicles overtaking and passing another vehicle traveling in the same direction. State v. Boone, 16 N.C. App. 368, 192 S.E.2d 13 (1972).

Applicability of Section to Litigation between Overtaking Motorist and Driver of Overtaken Vehicle. — Although this section is designed primarily to prevent collision between an overtaking automobile and a vehicle coming from the opposite direction, its provisions are germane to litigation between an overtaking motorist and the driver of an overtaken vehicle if there is evidence to the effect that the underlying accident was occasioned by an unsuccessful effort on the part of the former to pass the latter upon a marked curve. The driver of the overtaken vehicle is certainly not required in such case to anticipate that the latter will attempt to pass in violation of the section. Walker v. American Bakeries Co., 234 N.C. 440, 67 S.E.2d 459 (1951).

Statutes of this kind have no application to multiple-lane highways. Byerly v. Shell, 312 F.2d 141 (4th Cir. 1962).

The provisions of subsections (d) and (e) of this section were plainly not intended to apply to multiple highways which furnish parallel lanes on which vehicles moving in the same direction may pass without encountering traffic coming from the opposite direction. Byerly v.

Shell, 312 F.2d 141 (4th Cir. 1962).

Subsections (b) and (d) Harmonized. — Subsections (b) and (d) of this section are harmonious rather than conflictive. They are not designed to regulate the behavior of the operator of an overtaking automobile in any event unless he is traveling upon a curve in the highway. Whether the one statutory regulation or the other applies to the driver of an overtaking vehicle proceeding upon a curve in the highway depends on whether the curve is marked by a visible centerline placed upon the highway by the State Highway Commission (now Department of Transportation). Where the curve is so marked, the action of the operator of the overtaking automobile is governed by subsection (d), which forbids him to drive to the left side of the centerline in order to pass the overtaken vehicle; and where the curve is not so marked, the conduct of the driver of the overtaking automobile is controlled by subsection (b), which permits him to pass the overtaken vehicle unless his view along the highway is obstructed within a distance of 500 feet. Walker v. American Bakeries Co., 234 N.C. 440, 67 S.E.2d 459 (1951).

No rule of law compels one vehicle to travel indefinitely behind the other. Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

And no rule gives one vehicle the unqualified right to overtake and pass the other. Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

Purpose of Yellow Lines. — Yellow lines are designed primarily to prevent collision between an overtaking and passing automobile and a vehicle coming from the opposite direction, and to protect occupants of other cars, pedestrians and property on the highway. Rushing v. Polk, 258 N.C. 256, 128 S.E.2d 675 (1962); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

Presence and crossing of yellow line are evidential details in the totality of circumstances in a case. Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

Violation of Section as Negligence Per Se. — A violation of this section, relating to the limitations on privilege of overtaking and passing another vehicle, is negligence per se, and, if injury proximately results therefrom, the injured party is entitled to recover. Johnson v. Harris, 166 F. Supp. 417 (M.D.N.C. 1958); Rouse v. Jones, 254 N.C. 575, 119 S.E.2d 628 (1961).

A violation of this section is negligence per se if injury proximately results therefrom. Duncan v. Ayers, 55 N.C. App. 40, 284 S.E.2d 561 (1981).

Violation of subsection (a) negligence per se. State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Violation Not Negligence Per Se. — Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994), rev'd on other grounds, 339 N.C. 601, 453 S.E.2d 861 (1995).

Notice of Special Hazard. — Signs in construction area marked "One-Way Road," "Slow" and "Men Working," the presence of dirt piled along the highway and a ditch-digging machine at work on side of the highway constituted notice to driver of oil transport truck that he was approaching a zone of special hazard. Sloan v. Glenn, 245 N.C. 55, 95 S.E.2d 81 (1956).

Negligence and Contributory Negligence in Area of Special Hazard Held Jury Questions. — Attempt of truck driver to pass a backfiller tractor traveling in the same direction in an area of special hazard was not negligence as a matter of law under the circumstances, but truck driver's negligence and contributory negligence of tractor driver were questions for the jury. Sloan v. Glenn, 245 N.C. 55, 95 S.E.2d 81 (1956).

For case holding instruction erroneous as nullifying provisions of this section, see Walker v. American Bakeries Co., 234 N.C. 440, 67 S.E.2d 459 (1951).

Evidence Held Sufficient. — Evidence tending to show that defendant truck driver was traveling 35 to 40 miles per hour in an early morning fog which limited visibility to 100 or 126 feet, that he had overtaken a vehicle traveling in the same direction and was attempting to pass such vehicle 250 or 300 feet before reaching a curve, and that he collided with plaintiff's car which approached from the opposite direction was held sufficient to be submitted to the jury on the issue of the negligence of the truck driver. Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949).

Evidence that the driver of a truck, in attempting to pass cars going in the same direction, pulled out in the center of the road and hit car which plaintiff was driving in the opposite direction, causing damage to the car and injury to plaintiff, was sufficient to be submitted to the jury on the question of the actionable negligence of the driver of the truck. Joyner v. Dail, 210 N.C. 663, 188 S.E. 209 (1936).

For additional cases holding evidence sufficient to show violation of this section, see Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949); State v. Goins, 233 N.C. 460, 64 S.E.2d 289 (1951).

Evidence Held Insufficient. — Where plaintiff testified he passed in a passing zone and the evidence showed the collision occurred almost exactly where the passing zone ended, this evidence failed to establish plaintiff's negligence so clearly that no other reasonable inference could have been drawn. Therefore, the trial court did not err in denying defendant's motion for a directed verdict. Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

Contributory Negligence Held to Bar Recovery. — Even though the driver of a truck which collided with plaintiff's automobile failed to observe certain statutory requirements, where the evidence was clear in showing that the collision occurred when plaintiff was attempting to overtake and pass the truck proceeding in the same direction at a highway intersection, without permission so to do by a traffic or police officer, in violation of this section, contributory negligence on the part of plaintiff barred recovery. Cole v. Fletcher Lumber Co., 230 N.C. 616, 55 S.E.2d 86 (1949).

Nonsuit on the ground of contributory negligence was erroneously entered where plaintiff's evidence did not compel the inference that his negligence contributed as a proximate cause to his injury and damage. Pruett v. Inman, 252 N.C. 520, 114 S.E.2d 360 (1960).

Applied in Bass v. Roberson, 261 N.C. 125, 134 S.E.2d 157 (1964); Taney v. Brown, 262 N.C. 438, 137 S.E.2d 827 (1964); Knight v. Seymour, 263 N.C. 790, 140 S.E.2d 410 (1965); Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966); Wands v. Cauble, 270 N.C. 311, 154 S.E.2d 425 (1967); Stutts v. Burcham, 271 N.C. 176, 155 S.E.2d 742 (1967); Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 26 N.C. App. 6, 214 S.E.2d 605 (1975); Belk v. Peters, 63 N.C. App. 196, 303 S.E.2d 641 (1983).

Cited in State v. Palmer, 197 N.C. 135, 147 S.E. 817 (1929); Cook v. Horne, 198 N.C. 739, 153 S.E. 315 (1930); Queen City Coach Co. v. Lee, 218 N.C. 320, 11 S.E.2d 341 (1940); Tysinger v. Coble Dairy Prods., 225 N.C. 717, 36 S.E.2d 246 (1945); Citizens Nat'l Bank v. Phillips, 236 N.C. 470, 73 S.E.2d 323 (1952); Sheldon v. Childers, 240 N.C. 449, 82 S.E.2d 396 (1954) (as to subsection (c)); Kirkman v. Baucom, 246 N.C. 510, 98 S.E.2d 922 (1957); McGinnis v. Robinson, 252 N.C. 574, 114 S.E.2d 365 (1960); Bundy v. Belue, 253 N.C. 31, 116 S.E.2d 200 (1960); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964); Wyatt v. Haywood, 22 N.C. App. 267, 206 S.E.2d 260 (1974); Bell v. Brueggemyer, 35 N.C. App. 658, 242 S.E.2d 392 (1978); Rector v. James, 41 N.C. App. 267, 254 S.E.2d 633 (1979); Body ex rel. Body v. Varner, 107 N.C. App. 219, 419 S.E.2d 208 (1992).

II. PASSING AT RAILWAY GRADE CROSSINGS OR INTERSECTIONS.

Subsection (c) of this section is a safety statute enacted for the public's common safety and welfare. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

A private driveway is not an intersecting highway within the meaning of subsection (c) of this section. Levy v. Carolina Aluminum Co., 232 N.C. 158, 59 S.E.2d 632 (1950); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

Absent a statutory requirement, a motorist is only required to sound his horn when reasonably necessary to give warning. Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

Need to Prohibit Passing at Intersections. — In the case of a two-lane roadway in which traffic moves in both directions, the need to prohibit passing at intersections is obvious, since the driver in the rear may reasonably anticipate that the car in the lead may desire to turn to the left. To such a situation the statute clearly applies. Byerly v. Shell, 312 F.2d 141 (4th Cir. 1962).

The meaning of subsection (c) of this section is that one motorist may not pass another going in the same direction under either of two conditions: (1) At any place designated and marked by the State Highway Commission (now Department of Transportation) as an intersection; (2) At any street intersection in any city or town. Adams v. Godwin, 252 N.C. 471, 114 S.E.2d 76 (1960).

Subsection (c) of this section requires one to observe street intersections within corporate limits whether marked or unmarked. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

Since subsection (c) of this section does not contain the words "knowingly," "willfully" or other words of like import, it was the obvious intent of the legislature to make the performance of a specific act a criminal violation and to thereby place upon the individual the burden to know whether his conduct is within the statutory prohibition. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

Passing at Intersection on Dual Highway Is Not Negligence Per Se. — Under the proper interpretation of the North Carolina statutes, it is not unlawful and negligent per se for one vehicle to pass another at an intersection on a dual highway. Byerly v. Shell, 312 F.2d 141 (4th Cir. 1962).

But the exercise of careful lookout is especially indicated on a highway having a passing lane. State v. Fuller, 259 N.C. 111, 130 S.E.2d 61 (1963).

Passing at Crossover Not a Violation of Subsection (c). — An intersection under subsection (c) of this section must be designated and marked by the Highway Commission (now

Department of Transportation) by appropriate signs, and overtaking and passing another vehicle at "a crossover" is not a violation of this section and is therefore not negligence per se. Bennet v. Livingston, 250 N.C. 586, 108 S.E.2d 843 (1959).

Passing at Railroad Grade Crossing Is Negligence Per Se. — It is negligence per se for the operator of a motor vehicle to overtake and pass another vehicle traveling in the same direction at a railroad grade crossing. Murray v. Atlantic C.L.R.R., 218 N.C. 392, 11 S.E.2d 326 (1940).

As Is Unauthorized Passing at Intersection. — It is negligence per se for a motorist to overtake and pass another vehicle proceeding in the same direction at an intersection of a highway, unless permitted to do so by a traffic officer. Donivant v. Swain, 229 N.C. 114, 47 S.E.2d 707 (1948); Cole v. Fletcher Lumber Co., 230 N.C. 616, 55 S.E.2d 86 (1949); Ferris v. Whitaker, 123 F. Supp. 356 (E.D.N.C. 1954); Adams v. Godwin, 252 N.C. 471, 114 S.E.2d 76 (1960).

This section prohibits a motorist from overtaking and passing at highway intersections, and the violation of this section is negligence. Crotts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957).

Where plaintiff's driver overtook and attempted to pass defendant's truck at an intersection within a municipality, he was guilty of negligence per se under subsection (c) of this section, and without regard to his knowledge of whether he was within the city limits of the municipality. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

Where Injury Proximately Results Therefrom. — Violation of subsection (c) of this section constitutes negligence per se if injury proximately results therefrom. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964); Teachey v. Woolard, 16 N.C. App. 249, 191 S.E.2d 903, cert. denied, 288 N.C. 430, 192 S.E.2d 840 (1972).

For case holding that act of motorist in violating subsection (c) of this section was the sole proximate cause of collision which occurred when an overtaking motorist attempted to pass a truck while the latter was making a left turn at an intersection, without passing beyond the center of the intersection as was then required by G.S. 20-153, see Ferris v. Whitaker, 123 F. Supp. 356 (E.D.N.C. 1954).

For case holding that evidence did not compel the conclusion that plaintiff's driver attempted to pass defendant's vehicle at an intersection in violation of this section, see Carolina Cas. Ins. Co. v. Cline, 238 N.C. 133, 76 S.E.2d 374 (1953).

Failure to Instruct on Subsection (c) Held Error. — Where the evidence tended to show that the driver of an automobile overtook and attempted to pass a truck proceeding in the same direction at an intersection of streets in a municipality at which no traffic officer was stationed, and that the vehicle collided when the driver of the truck made a left turn at the intersection, it was error for the court to instruct the jury that the provisions of subsection (c) of this section did not apply. Donivant v. Swain, 229 N.C. 114, 47 S.E.2d 707 (1948).

Denial of Nonsuit on Grounds of Contributory Negligence Upheld. — Where plaintiff's evidence tended to show that he started passing a truck 275 feet from an intersection, nonsuit on the ground that plaintiff was contributorily negligent in attempting to pass at an intersection was properly denied, since the evidence was susceptible to the inference that plaintiff could have passed the truck before it reached the intersection had not the driver of the truck turned suddenly to the left 75 feet from the intersection in "cutting the corner." Howard v. Bingham, 231 N.C. 420, 57 S.E.2d 401 (1950).

OPINIONS OF ATTORNEY GENERAL

Solid Centerlines Are Considered to Be "Markings" Under Subsection (e) of This Section. — See opinion of Attorney General to Ms. Clair McNaught, Public Safety Attorney, 49 N.C.A.G. 1 (1979).

§ 20-150.1. When passing on the right is permitted.

The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is in a lane designated for left turns;

(2) Upon a street or highway with unobstructed pavement of sufficient width which have been marked for two or more lanes of moving vehicles in each direction and are not occupied by parked vehicles;

(3) Upon a one-way street, or upon a highway on which traffic is restricted to one direction of movement when such street or highway is free from

obstructions and is of sufficient width and is marked for two or more lanes of moving vehicles which are not occupied by parked vehicles;

(4) When driving in a lane designating a right turn on a red traffic signal light. (1953, c. 679.)

Legal Periodicals. — For brief comment on this section, see 31 N.C.L. Rev. 418 (1953).

CASE NOTES

Passing on the right, when not sanctioned by this section, constitutes negligence per se if found to be the proximate cause of a collision. Teachey v. Woolard, 16 N.C. App. 249, 191 S.E.2d 903, cert. denied, 282 N.C. 430, 192 S.E.2d 840 (1972).

Applied in Schloss v. Hallman, 255 N.C. 686, 122 S.E.2d 513 (1961).

Cited in Oliver v. Royall, 36 N.C. App. 239, 243 S.E.2d 436 (1978); Duncan v. Ayers, 55 N.C. App. 40, 284 S.E.2d 561 (1981).

§ 20-151: Repealed by Session Laws 1995, c. 283, s. 2.

§ 20-152. Following too closely.

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor vehicle traveling upon a highway outside of a business or residential district and following another motor vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor vehicle from overtaking and passing another motor vehicle. This provision shall not apply to funeral processions. (1937, c. 407, s. 114; 1949, c. 1207, s. 4; 1973, c. 1330, s. 17.)

Legal Periodicals. — For article on proof of negligence in North Carolina, see 48 N.C.L. Rev. 731 (1970).

CASE NOTES

Subsection (a) of this section is a statutory declaration of the common law that the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway. Black v. Gurley Milling Co., 257 N.C. 730, 127 S.E.2d 515 (1962).

The rule of the road set out in this section does not apply where one motorist is overtaking and passing another, as authorized by G.S. 20-149, or where there are two lanes available to the motorist and the forward vehicle is in the outer lane and the overtaking vehicle is in the passing lane. Maddox v. Brown, 232 N.C. 542, 61 S.E.2d 613 (1950).

If the defendant was in the act of passing, then this section would have no application and provide no standard by which the court might judge. Gowens v. Morgan & Sons Poultry Co., 238 F. Supp. 399 (M.D.N.C. 1964).

Nor to Vehicles Stopping One Behind the Other. — The statutory prohibition against following too closely a vehicle traveling in the same direction has no application to the distance between vehicles stopping one behind another on the highway. There is no prescribed distance within which one car must stop behind another stopped car. Royal v. McClure, 244 N.C. 186, 92 S.E.2d 762 (1956).

This section fixes no specific distance at which one automobile may lawfully follow another. Beanblossom v. Thomas, 266 N.C. 181, 146 S.E.2d 36 (1966).

Determining Proper Space to Be Maintained Between Vehicles. — A motorist, in determining the proper space to be maintained between his vehicle and the one preceding him, must take into consideration such variables as the locality, road and weather conditions, other traffic on the highway, and the characteristics of the vehicle he is driving, as well as that of the one ahead, the relative speeds of the two, and his ability to control and stop his vehicle should an emergency require it. Thus, the space is determined according to the standard of reasonable care and should be sufficient to enable the operator of the car behind to avoid danger in case of a sudden stop or a decrease in speed by the vehicle ahead under circumstances which should reasonably be anticipated by the following driver. Beanblossom v. Thomas, 266 N.C. 181, 146 S.E.2d 36 (1966).

Drivers Charged with Notice that Operation of Each Car in Line Is Affected by Car in Front. — Where plaintiff and defendant had been driving their cars behind a line of cars for a substantial distance, the drivers, in the exercise of reasonable care, were charged with notice that the operation of each car was affected by the one in front of it. They had to maintain such distance, keep such a lookout, and operate at such speed, under these conditions, that they could control their cars under ordinarily foreseeable developments. Griffin v. Ward, 267 N.C. 296, 148 S.E.2d 133 (1966).

Condition and effectiveness of brakes must be taken into consideration by a motorist in determining what is a safe distance and a safe speed at which he may follow another vehicle. Crotts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957).

Exercise of care after discovery of sudden peril would not exercise negligent conduct where the sudden peril was due to failure to keep a safe distance behind another vehicle and maintain a proper lookout. Gowens v. Morgan & Sons Poultry Co., 238 F. Supp. 399 (M.D.N.C. 1964).

Certain Inferences Are Permitted from Fact of Collision. — Ordinarily the mere fact of a collision with the vehicle ahead furnishes some evidence that the motorist to the rear was not keeping a proper lookout or that he was following too closely. Burnett v. Corbett, 264 N.C. 341, 141 S.E.2d 468 (1965).

Unless the driver of the leading vehicle is himself guilty of negligence, or unless an emergency is created by some third person or other highway hazard, the mere fact of a collision with the vehicle ahead furnishes some evidence that the motorist in the rear was not keeping a proper lookout or that he was following too closely. Beanblossom v. Thomas, 266 N.C. 181, 146 S.E.2d 36 (1966).

The mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed or was following too closely. Griffin v. Ward, 267 N.C. 296, 148 S.E.2d 133 (1966); Huggins v. Kye, 10 N.C. App. 221, 178 S.E.2d 127 (1970).

Admission of defendant that his car collided with the rear of plaintiff's car permitted a legitimate inference by a jury that defendant was following plaintiff's automobile more closely than was reasonable and prudent, in violation of this section. Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

But Mere Proof of Collision Does Not Compel Conclusions. — Though the mere fact of a collision with a vehicle furnishes some evidence of a violation of this section, or of failure to keep a proper lookout, the mere proof of a collision with a preceding vehicle does not compel either of these conclusions. It merely raises a question for the jury to determine. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966); Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

The following driver is not an insurer against rear-end collisions, for, even when he follows at a distance reasonable under the existing conditions, the space may be too short to permit a stop under any and all eventualities. White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

A violation of this section is negligence per se. Burnett v. Corbett, 264 N.C. 341, 141 S.E.2d 468 (1965); Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966); Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

A motorist is prohibited by this section from following another vehicle more closely than is reasonable and prudent under the circumstances with regard to the traffic and the condition of the highway, and the violation of this section is negligence. Crotts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957).

A violation of subsection (a) of this section is negligence per se, and, if injury proximately results therefrom, it is actionable. Murray v. Atlantic C.L.R.R., 218 N.C. 392, 11 S.E.2d 326 (1940); Cozart v. Hudson, 239 N.C. 279, 78 S.E.2d 881 (1954); Smith v. Rawlins, 253 N.C. 67, 116 S.E.2d 184 (1960); Fox v. Hollar, 257 N.C. 65, 125 S.E.2d 334 (1962); Hamilton v. McCash, 257 N.C. 611, 127 S.E.2d 214 (1962); Gowens v. Morgan & Sons Poultry Co., 238 F. Supp. 399 (M.D.N.C. 1964); Beanblossom v. Thomas, 266 N.C. 181, 146 S.E.2d 36 (1966).

For case holding that plaintiff was not guilty of contributory negligence in following too closely a truck with which he collided, see Killough v. Williams, 224 N.C. 254, 29 S.E.2d 697 (1944).

Instruction Required. — Where violation of this section bore directly on the issue of defendant's negligence, which was a substantial feature of the case, the court should have declared and explained the section in its charge to the jury, and should also have explained that violation of this section was negligence per se. The court had this duty irrespective of plaintiff's request for special instructions. Scher v.

Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

Where court, in its charge on contributory negligence, did not call attention to corresponding former section, an exception to the charge would not be sustained in the absence of a special request for such instruction. Alexander v. Southern Pub. Utils. Co., 207 N.C. 438, 177 S.E. 427 (1934).

Applied in State v. Holbrook, 228 N.C. 620, 46 S.E.2d 843 (1948); Pacific Fire Ins. Co. v. Sistrunk Motors, Inc., 241 N.C. 67, 84 S.E.2d 301 (1954); Hall v. Little, 262 N.C. 618, 138 S.E.2d 282 (1964); Brown v. Hale, 263 N.C. 176, 139 S.E.2d 210 (1964).

Cited in Hobbs v. Mann, 199 N.C. 532, 155 S.E. 163 (1930); Smith v. Carolina Coach Co., 214 N.C. 314, 199 S.E. 90 (1938); State v. Steelman, 228 N.C. 634, 46 S.E.2d 845 (1948); Clifton v. Turner, 257 N.C. 92, 125 S.E.2d 339 (1962); Dunlap v. Lee, 257 N.C. 447, 126 S.E.2d 62 (1962); Jones v. C.B. Atkins Co., 259 N.C. 655, 131 S.E.2d 371 (1963); Southwire Co. v. Long Mfg. Co., 12 N.C. App. 335, 183 S.E.2d 253 (1971); Shay v. Nixon, 45 N.C. App. 108, 262 S.E.2d 294 (1980); State v. Clements, 51 N.C. App. 113, 275 S.E.2d 222 (1981); State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985); State v. McClendon, 130 N.C. App. 368, 502 S.E.2d 902 (1998); State v. McClendon, 350 N.C. 630, 517 S.E.2d 128 (1999); State v. Wilson, 155 N.C. App. 89, 574 S.E.2d 93 (2002); Williams v. Davis, 157 N.C. App. 696, 580 S.E.2d 85, 2003 N.C. App. LEXIS 936 (2003); State v. Hernandez, 170 N.C. App. 299, 612 S.E.2d 420, 2005 N.C. App. LEXIS 1006 (2005).

§ 20-153. Turning at intersections.

(a) Right Turns. — Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left Turns. — The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of that vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in the direction upon the roadway being entered.

(c) Local authorities and the Department of Transportation, in their respective jurisdictions, may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers, or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed. (1937, c. 407, s. 115; 1955, c. 913, s. 5; 1973, c. 1330, s. 18; 1977, c. 464, s. 34; 1997-405, s. 1.)

CASE NOTES

Subsection (b) Does Not Distinguish Two-Lane Roads from Roads with More Than Two Lanes. — While subsection (a) of this section speaks in terms describing a portion of a roadway: "right-hand curb or edge," subsection (b) of this section speaks in terms of the "left-hand lane." The logical driver might expect another driver preparing to turn left at an intersection on a two-lane street to approach the intersection in the portion of the roadway nearest the center line on the left, but this is not what subsection (b) of this section says. Subsection (b) of this section makes no distinction between two-lane or more than two-lane roadways. Gay v. Walter, 58 N.C. App. 813, 294 S.E.2d 769 (1982).

Instruction on Subsection (b) Held Erroneous. — Where the evidence shows that a collision occurred between an automobile, which intended to turn left at the approaching intersection, traveling in the right-hand lane of a two-lane street with one lane of traffic in each direction and another automobile, which pulled out of a parking space in front of the first automobile, an instruction on the requirements of subsection (b) of this section is erroneous. Gay v. Walter, 58 N.C. App. 813, 294 S.E.2d 769 (1982).

As to purpose of provision formerly requiring that driver intending to turn to the left should pass beyond center of intersection, see Ferris v. Whitaker, 123 F. Supp. 356 (E.D.N.C. 1954).

Right to Pass Vehicle in Left-Turn Lane on the Right. — When a motorist approaches from the rear a vehicle standing in the left-turn lane, he has the right to assume that the driver of that vehicle will turn to the left upon the change of the traffic signal. He has the right, and it is his duty, to pass the vehicle on its right. Anderson v. Talman Office Supplies, Inc., 234 N.C. 142, 66 S.E.2d 677 (1951). See Anderson v. Talman Office Supplies, Inc., 236 N.C. 519, 73 S.E.2d 141 (1952).

Inferences from Fact of Collision. — The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; negligence, if any, depends upon the circumstances. Powell v. Cross, 263 N.C. 764, 140 S.E.2d 393 (1965).

A violation of subsection (a) is negligence per se, and if injury proximately results therefrom, such violation is actionable. Tarrant v. Pepsi-Cola Bottling Co., 221 N.C. 390, 20 S.E.2d 565 (1942); Simmons v. Rogers, 247 N.C. 340, 100 S.E.2d 849 (1957); Pearsall v. Duke Power Co., 258 N.C. 639, 129 S.E.2d 217 (1963).

Proximate Cause for Jury. — If plaintiff violated this section and was guilty of contributory negligence per se, it was for the jury to say whether such negligence proximately caused or contributed to plaintiff's injuries and damage, bearing in mind that reasonable foreseeability is an essential element of proximate cause. White v. Lacey, 245 N.C. 364, 96 S.E.2d 1 (1957).

Charge to Jury as to Making of Left Turn. — When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, the court should tell the jury how to find the intersection of the streets and how, when the motorist reaches the intersection, he is required to drive in making a left turn. Pearsall v. Duke Power Co., 258 N.C. 639, 129 S.E.2d 217 (1963).

Circumstances Held to Warrant Inference of Negligence and Submission to Jury. — Where plaintiff was lawfully in an intersection, standing in a position where he was clearly visible to the driver of defendant's taxicab as the latter approached the intersection, and the taxi driver, had he been keeping a proper lookout, could have seen plaintiff in ample time to avoid a collision, but instead "cut the corner," in violation of subsection (a) of this section, without giving any signal or warning of his approach, resulting in a collision, these circumstances, unrebutted, warranted an inference of negligence and were sufficient to require the submission of appropriate issues to the jury. Ward v. Bowles, 228 N.C. 273, 45 S.E.2d 354 (1947).

For case holding evidence insufficient to show a violation of this section, see Kidd v. Burton, 269 N.C. 267, 152 S.E.2d 162 (1967).

Applied in Cole v. Fletcher Lumber Co., 230 N.C. 616, 55 S.E.2d 86 (1949); Stewart v. Gallimore, 265 N.C. 696, 144 S.E.2d 862 (1965); Wands v. Cauble, 270 N.C. 311, 154 S.E.2d 425 (1967).

Cited in Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951); Smith v. United States, 94 F. Supp. 681 (W.D.N.C. 1951); Hudson v. Petroleum Transit Co., 250 N.C. 435, 108 S.E.2d 900 (1959); Ray v. French Broad Elec. Membership Corp., 252 N.C. 380, 113 S.E.2d 806 (1960); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964); Almond v. Bolton, 272 N.C. 78, 157 S.E.2d 709 (1967); Hardy v. Tesh, 5 N.C. App. 107, 167 S.E.2d 848 (1969).

§ 20-154. Signals on starting, stopping or turning.

(a) The driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Division, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Division.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn — hand and arm horizontal, forefinger pointing.
Right turn — hand and arm pointed upward.
Stop — hand and arm pointed downward.

All hand and arm signals shall be given from the left side of the vehicle and all signals shall be maintained or given continuously for the last 100 feet traveled prior to stopping or making a turn. Provided, that in all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning.

Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles except combinations operated by farmers in hauling farm products.

(c) No person shall operate over the highways of this State a right-hand-drive motor vehicle or a motor vehicle equipped with the steering mechanism on the right-hand side thereof unless said motor vehicle is equipped with mechanical or electrical signal devices by which the signals for left turns and right turns may be given. Such mechanical or electrical devices shall be approved by the Division.

(d) A violation of this section shall not constitute negligence per se. (1937, c. 407, s. 116; 1949, c. 1016, s. 1; 1951, cc. 293, 360; 1955, c. 1157, s. 9; 1957, c. 488, s. 2; 1965, c. 768; 1973, c. 1330, s. 19; 1975, c. 716, s. 5; 1981, c. 599, s. 4; 1985, c. 96.)

Legal Periodicals. — For note, "Turning and Stopping — Signals by Drivers," see 29 N.C.L. Rev. 439 (1951).

For article on proof of negligence in North Carolina, see 48 N.C.L. Rev. 731 (1970).

CASE NOTES

I. In General.
II. Negligence and Proximate Cause.

I. IN GENERAL.

Editor's Note. — *A number of the cases cited below were decided prior to the 1965 amendment to subsection (b) of this section, which added a former proviso as to violations not constituting negligence per se, and the 1973 amendment, which added subsection (d), to the same effect.*

Purpose of Section. — The manifest purpose of this section is to promote safety in the operation of automobiles on the highways, and not to obstruct vehicular traffic. Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

The manifest object of this section is to promote vehicular travel. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950).

This section must be given a reasonable and realistic interpretation to effect the legislative purpose. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

Evidence Seized After Valid Stop Under this Section Held Admissible. — Officer had probable cause to stop defendant because the officer, who was traveling behind defendant, saw defendant change lanes without signaling, which was a violation G.S. 20-154(a); the trial court's denial of defendant's motion to suppress evidence seized after the stop was proper. State v. Styles, 185 N.C. App. 271, 648 S.E.2d 214, 2007 N.C. App. LEXIS 1696 (2007).

Section Inapplicable Where Driver Has No Choice. — This section, which provides that the driver of a motor vehicle shall not stop without first seeing that he can do so in safety, and that he must give a signal of his intention where the operation of other cars might be affected, is not applicable where the driver has no choice but to stop, such as where he is confronted with a situation which demands that he stop because the line of cars in front of him has done so, he cannot turn left because of oncoming traffic, and it has been raining and the windows of his car are up so that he can give no hand signal. Griffin v. Ward, 267 N.C. 296, 148 S.E.2d 133 (1966).

Where plaintiff, whose vehicle was struck from the rear by defendant, had failed to give any signal indicating that he was going to stop, but defendant's own evidence established that plaintiff had no time in which to give a signal, plaintiff was not guilty of contributory negligence, because he was under no statutory duty to give a signal where he had no choice but to stop because of the situation. Harris v. Freeman, 18 N.C. App. 85, 196 S.E.2d 48 (1973).

The approach of a police vehicle giving a signal by siren does not nullify or suspend the provisions of this section, or relieve a motorist of the duty to ascertain, before turning to his right, that such movement can be made in safety, or to signal any vehicle approaching from the rear. Anderson v. Talman Office Supplies Inc., 234 N.C. 142, 66 S.E.2d 677 (1951). See also, Anderson v. Talman Office Supplies, 236 N.C. 519, 73 S.E.2d 141 (1952).

Two Duties Imposed on Motorist on Starting, Stopping or Turning. — This section requires of one operating a motor vehicle before starting, stopping or turning from the direct line that he is traveling to first see that such movement can be made in safety, and when the operation of another vehicle by such movement may be affected, to give a signal plainly visible to the driver of the other vehicle of his intent to make such movement. Porter v. Philyaw, 204 F. Supp. 285 (W.D.N.C. 1962).

This section imposes two duties upon a motorist intending to turn: (1) To see that the movement can be made in safety; and (2) To give the required signal when the operation of any other vehicle may be affected. Tart v. Register, 257 N.C. 161, 125 S.E.2d 754 (1962); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965); Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968); Johnson v. Douglas, 6 N.C. App. 109, 169 S.E.2d 505 (1969); Taylor v. Hudson, 49 N.C. App. 296, 271 S.E.2d 70 (1980).

This section imposes two duties upon a motorist intending to turn from a direct line upon a highway: (1) To exercise reasonable care to see that such movement can be made in safety; and (2) To give the required signal whenever the operation of any other vehicle may be affected by such movement, plainly visible to the driver of such other vehicle, of the intention to make such movement. McNamara v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964).

The duties imposed upon the driver intending to turn from a direct line are twofold: (1) He must first ascertain whether the move can be made in safety; and (2) Upon ascertaining that another vehicle might be affected, he must give a signal, plainly visible, of his intention so to move. Sharpe v. Grindstaff, 329 F. Supp. 405 (M.D.N.C. 1970), rev'd on other grounds, 446 F.2d 152 (4th Cir. 1971).

Driver Must First See That Turn Can Be Made in Safety. — Every driver who intends to turn, or partly turn, from a direct line shall first see that such movement can be made in safety. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

While it is true that subsection (a) of this section does not mean that a motorist may not make a left turn on a highway unless the circumstances are absolutely free from danger, he is required to exercise reasonable care in determining that his intended movement can be made in safety. Petree v. Johnson, 2 N.C. App. 336, 163 S.E.2d 87 (1968).

The giving of a signal for a left turn does not give the signaler an absolute right to make the turn immediately, regardless of circumstances; the signaler must first ascertain that the movement may be made safely. Eason v. Grimsley, 255 N.C. 494, 121 S.E.2d 885 (1961); McNamara v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964).

A signal would be futile if a turn could not be made in safety; and, therefore, there is a complete failure of duty upon the part of the driver of the turning car if he does not first use reasonable care to see that the turn may be made in safety. Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951).

Under circumstances making subsection (a) of this section applicable, the statute imposes both the duty of giving the required turn signal and the duty to see prior to turning that such movement can be made in safety. Brown v. Brown, 38 N.C. App. 607, 248 S.E.2d 397 (1978).

A person who drives a motor vehicle upon this State's highways must exercise reasonable care to ascertain that he can turn safely from a straight course of travel. Horne v. Trivette, 58 N.C. App. 77, 293 S.E.2d 290, cert. denied, 306 N.C. 741, 295 S.E.2d 759 (1982).

And a driver making a left turn must always use the care which a reasonable man would use under like circumstances. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

A change of lanes by a passing motorist may require the same precautions as an actual turn and such an interpretation promotes safe vehicular travel. This reading is a reasonable and realistic interpretation of the statute. Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

But Circumstances Need Not Be Absolutely Free from Danger. — The requirement that a motorist shall not turn from a straight line until he has first seen that the movement can be made in safety does not mean that he may not make a left turn on the highway unless the circumstances are absolutely free from danger, but only that he exercise reasonable care under the circumstances to ascertain that such movement can be made

with safety. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950); White v. Lacey, 245 N.C. 364, 96 S.E.2d 1 (1957); Tart v. Register, 257 N.C. 161, 125 S.E.2d 754 (1962); Williams v. Tucker, 259 N.C. 214, 130 S.E.2d 306 (1963); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965); Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968); Johnson v. Douglas, 6 N.C. App. 109, 169 S.E.2d 505 (1969); Taylor v. Hudson, 49 N.C. App. 296, 271 S.E.2d 70 (1980).

A motorist is not required to ascertain that a turning motion is absolutely free from danger. Cowan v. Murrows Transf., Inc., 262 N.C. 550, 138 S.E.2d 228 (1964); Hales v. Flowers, 7 N.C. App. 46, 171 S.E.2d 113 (1969); Hudgens v. Goins, 15 N.C. App. 203, 189 S.E.2d 633 (1972).

The provisions of subsection (a) of this section do not require infallibility of a motorist, and do not mean that he cannot make a left turn upon a highway unless the circumstances are absolutely free from danger. McNamara v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964); Almond v. Bolton, 272 N.C. 78, 157 S.E.2d 709 (1967).

The statutory provision that "the driver of any vehicle upon a highway before ... turning from a direct line shall first see that such movement can be made in safety" does not mean that a motorist may not make a left turn on a highway unless the circumstances render such turning absolutely free from danger. It is simply designed to impose upon the driver of a motor vehicle who is about to make a left turn upon a highway the legal duty to exercise reasonable care under the circumstances in ascertaining that such movement can be made with safety to himself and others before he actually undertakes it. Hales v. Flowers, 7 N.C. App. 46, 171 S.E.2d 113 (1969).

This provision is designed to impose upon a driver the legal duty to exercise reasonable care under the circumstances in ascertaining that his movement can be made with safety to himself and others before he actually undertakes the movement. It does not mean that a motorist may not make a turn on a highway unless the circumstances render such turning absolutely free from danger. Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

And Turning Driver May Assume That Approaching Motorist Will Exercise Due Care. — In considering whether he can turn with safety and whether he should give a statutory signal of his purpose, the driver of a motor vehicle who undertakes to make a left turn in front of an approaching motorist has the right to take it for granted, in the absence of notice to the contrary, that the oncoming motorist will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care to avoid collision with his turning vehicle. McNamara v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964); Johnson v. Douglas, 6 N.C. App. 109, 169 S.E.2d 505 (1969); Taylor v. Hudson, 49 N.C. App. 296, 271 S.E.2d 70 (1980); Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

Giving of Both Hand and Mechanical Signals Is Not Required. — There is nothing in this section or in the case law that requires under any conditions that a hand signal and a mechanical or electrical signal shall both be given before making a left turn. Rudd v. Stewart, 255 N.C. 90, 120 S.E.2d 601 (1961).

The duty to give a signal does not arise unless the operation of some other vehicle may be affected by such movement. When the surrounding circumstances afford a driver reasonable grounds to conclude that a left turn might affect the operation of another vehicle, then the duty to give the statutory signal is imposed upon him. Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968).

This section does not require that a motorist give a proper signal before making a left turn on the highway unless the surrounding circumstances afford him reasonable grounds for apprehending that such movement may affect the operation of another vehicle, and in exercising such prevision he may, in the absence of notice to the contrary, assume that other motorists will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950).

This section does not require the driver of a motor vehicle intending to make a left turn upon a highway to signal his purpose to turn in every case. The duty to give a statutory signal of an intended left turn does not arise in any event unless the operation of some other vehicle may be affected by such movement. And even then the law does not require infallibility of the motorist. It imposes upon him the duty of giving a statutory signal of his intended left turn only in case the surrounding circumstances afford him reasonable grounds for apprehending that his making the left turn upon the highway might affect the operation of another vehicle. Blanton v. Carolina Dairy, Inc., 238 N.C. 382, 77 S.E.2d 922 (1953).

The duty to signal is imposed only where the surrounding circumstances afford the driver reasonable grounds for apprehending his turn might affect the operation of another vehicle. Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

No signal is required by subsection (a) of this section when the operation of another vehicle will not be affected by starting, stopping, or turning. Clarke v. Holman, 1 N.C. App. 176, 160 S.E.2d 552, aff'd, 274 N.C. 425, 163 S.E.2d 783 (1968).

Subsection (a) of this section does not require that a motorist give a signal before turning unless the surrounding circumstances afford reasonable grounds for apprehending that the turn may affect the operation of another vehicle. Brown v. Brown, 38 N.C. App. 607, 248 S.E.2d 397 (1978).

Person Observing No Vehicles in Either Direction Is Under No Obligation to Give Signal. — Where plaintiff first looked in both directions, and observed no automobile or other vehicle approaching from either direction, he was under no obligation under this section to give any signal of his purpose to turn to his left and enter the driveway to his home. Stovall v. Ragland, 211 N.C. 536, 190 S.E. 899 (1937).

One is not required to give a signal to a motorist who has yet appeared on the horizon. Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968).

But Driver Must Keep Outlook in Direction of Travel. — It is the duty of the driver of a motor vehicle not merely to look, but to keep an outlook in the direction of travel. Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968).

And a driver is held to the duty of seeing what he ought to have seen. Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968).

Where cars are meeting at an intersection and one intends to turn across the lane of travel of the other, subsection (b) of G.S. 20-155 and subsection (a) of this section apply, and the driver making the turn is under duty to give a plainly visible signal of his intention to turn, and to ascertain that such movement can be made in safety, without regard to which vehicle entered the intersection first. Fleming v. Drye, 253 N.C. 545, 117 S.E.2d 416 (1960); King v. Sloan, 261 N.C. 562, 135 S.E.2d 556 (1964).

Giving Signal Does Not Relieve Driver of Other Duties. — The requirement in this section that a prescribed hand signal be given of intention to make a left turn in traffic does not constitute full compliance with the mandate also expressed that before turning from a direct line the driver shall first see that such movement can be made in safety, nor does the performance of this mechanical act alone relieve the driver of the common-law duty to exercise due care in other respects. Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951); Simmons v. Rogers, 247 N.C. 340, 100 S.E.2d 849 (1957).

The driver of an automobile may be required to give not only the statutory signals, but also other signals, or to slacken speed or take other steps to avoid a collision, if the surrounding circumstances and conditions require it. The giving of the statutory signals is the least the law requires. Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951).

And It Is Not Necessarily Enough to Look and Give Signal. — In making a left turn, it is not necessarily enough to absolve a driver from negligence that he looked and gave the statutory signal. When a turning vehicle is drawing behind it a 40-foot pole, it is obvious that a left turn at a right angle will involve some swinging of the end of the pole in an arc through part of the intersection. Evidence of such a turn with such a load is sufficient to permit, though not to require, the jury to find that reasonable care for the safety of other users of the highway demands the stationing of some person at the intersection to stop traffic which may otherwise be imperiled by the turn. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

An allegation that the proper turn signal was given does not support the conclusion that the signaler thereby acquired the right to make an uninterrupted turn, or that the turn made pursuant thereto was lawful. Tart v. Register, 257 N.C. 161, 125 S.E.2d 754 (1962).

Right to Assume That Driver Will Give Signal. — A person has the right to assume, and to act on the assumption, that the driver of a vehicle approaching from the opposite direction will comply with subsection (a) of this section before making a left turn across his path. Petree v. Johnson, 2 N.C. App. 336, 163 S.E.2d 87 (1968).

And to Assume That Driver Will Delay Turn Until Safe. — Without regard to whether the turning driver gives the appropriate signal, other motorists affected have the right to assume that he will delay his movement until it may be made in safety. Brown v. Brown, 38 N.C. App. 607, 248 S.E.2d 397 (1978).

When the circumstances do not allow the signaler a reasonable margin of safety, other affected motorists have the right to assume that he will delay his movement until it may be made in safety. Eason v. Grimsley, 255 N.C. 494, 121 S.E.2d 885 (1961).

Until One Sees or Ought to See Turn Being Made. — While ordinarily a motorist may assume and act on the assumption that the driver of vehicle approaching from the opposite direction will comply with statutory requirements as to signaling before making a left turn across his path, he is not entitled to indulge in this assumption after he sees or by exercise of due care ought to see that the approaching driver is turning to his left across the highway to enter an intersecting road. Jernigan v. Jernigan, 236 N.C. 430, 72 S.E.2d 912 (1952).

A signal must be maintained for a sufficient distance and length of time to enable the driver of the following vehicle to observe it and to understand therefrom what movement is intended. Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

The prescribed hand signal should be maintained for a sufficient length of time

to enable the driver of the following vehicle to observe it and to understand therefrom what movement is intended. Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951); McNamara v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964).

Effect of Traffic Signals at Intersection. — Where street intersection had electrically operated traffic signals, with the usual red, yellow, and green lights, the rights of a motorist at such intersection were controlled by the traffic signals and not by the section. White v. Cothran, 260 N.C. 510, 133 S.E.2d 132 (1963).

Where the intersection of streets in a municipality has authorized electric traffic signals, requirements in regard to stopping are controlled by the traffic lights and not by subsection (b) of this section. Jones v. Holt, 268 N.C. 381, 150 S.E.2d 759 (1966).

When a motorist approaches an electrically controlled signal at an intersection of streets or highways, he is under the legal duty to maintain a proper lookout and to keep his motor vehicle under reasonable control in order that he may stop before entering the intersection if the green light changes to yellow or red before he actually enters the intersection. Likewise, another motorist, following immediately behind the first motorist, is not relieved of the legal duty to keep his motor vehicle under reasonable control in order that he might not collide with the motor vehicle in front of him in the event the driver of the first car is required to stop before entering the intersection by reason of the signal light changing from green to yellow or red. Jones v. Holt, 268 N.C. 381, 150 S.E.2d 759 (1966).

In subsection (a) of this section there is no hint of a legislative intent to create a clear dichotomy between those intersections with and those without traffic lights. A pedestrian following the lights and continuing his straight course has the right to rely on the presumption that the driver will obey the law as set forth in this section. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Duty on Starting After Having Stopped for Red Light. — After stopping for a red light at an intersection, before starting again a driver should not only have the green light or the go sign facing him, but he should also see and determine in the exercise of due care that such movement can be made in safety. Troxler v. Central Motor Lines, 240 N.C. 420, 82 S.E.2d 342 (1954).

Violation of Section as Question for Jury. — Whether defendant observed the rule of the road first, by ascertaining if a turn would affect the operation of any other vehicle, and second, by giving the required signal, under this section, raised an issue of fact for the jury. Mason v. Johnson, 215 N.C. 95, 1 S.E.2d 379 (1939).

Whether, according to the evidence, red signal lights on a stopped truck flashing on and off were sufficient to indicate a left turn of the truck was for the jury to decide. Weavil v. C.W. Myers Trading Post, Inc., 245 N.C. 106, 95 S.E.2d 533 (1956).

Whether signal lights would blink, and whether, if they would blink, they were "plainly visible," as required by this section, were questions for the jury. Eason v. Grimsley, 255 N.C. 494, 121 S.E.2d 885 (1961).

It was for the jury to determine whether plaintiff should have reasonably anticipated that the operation of any other vehicle might be affected by his making a right-hand turn. Kidd v. Burton, 269 N.C. 267, 152 S.E.2d 162 (1967).

For case holding that evidence showed violation of section, see Powell v. Lloyd, 234 N.C. 481, 67 S.E.2d 664 (1951).

Violation of Section Not Shown. — Where a motorist made a left turn across a street, without signaling, to enter a filling station, when a vehicle approaching from the opposite direction was 900 feet away, and was struck by such other vehicle which was traveling at a speed of approximately 70 miles per hour, such motorist did not violate this section, since the motorist had every reason to believe that he could complete his turn with safety to himself and others without affecting in any way the operation of the approaching vehicle. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950).

Violation Shown. — Trial court's finding that at the time defendant's vehicle changed lanes without a signal, it was being operated by defendant immediately in front of an arresting officer's vehicle indicated that defendant's failure to signal violated G.S. 20-154(a) because it was clear that changing lanes immediately in front of another vehicle might affect the operation of the trailing vehicle. State v. Styles, 362 N.C. 412, 665 S.E.2d 438, 2008 N.C. LEXIS 685 (2008).

Duty of Bicyclist. — Under ordinary circumstances, it is the duty of a bicyclist, before turning from a direct line of travel, to ascertain that the movement can be made in safety, and to signal his intention to make the movement if the operation of any other vehicle will be thereby affected. Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966).

Violation of this section and former § 20-138 (now § 20-138.1) is not sufficient to sustain a prosecution for involuntary manslaughter unless a causal relation is shown between the breach of the statute and the death. State v. Lowery, 223 N.C. 598, 27 S.E.2d 638 (1943). See also, Templeton v. Kelley, 216 N.C. 487, 5 S.E.2d 555 (1939), modified in part on rehearing, 217 N.C. 164, 7 S.E.2d 380 (1940).

Applied in Badders v. Lassiter, 240 N.C. 413, 82 S.E.2d 357 (1954); Shoe v. Hood, 251

N.C. 719, 112 S.E.2d 543 (1960); Scarborough v. Ingram, 256 N.C. 87, 122 S.E.2d 798 (1961); Parker v. Bruce, 258 N.C. 341, 128 S.E.2d 561 (1962); Queen v. Jarrett, 258 N.C. 405, 128 S.E.2d 894 (1963); Faulk v. Althouse Chem. Co., 259 N.C. 395, 130 S.E.2d 684 (1963); Carolina Coach Co. v. Cox, 337 F.2d 101 (4th Cir. 1964); Mayberry v. Allred, 263 N.C. 780, 140 S.E.2d 406 (1965); Stewart v. Gallimore, 265 N.C. 696, 144 S.E.2d 862 (1965); Simpson v. Lyerly, 265 N.C. 700, 144 S.E.2d 870 (1965); Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Stutts v. Burcham, 271 N.C. 176, 155 S.E.2d 742 (1967); Roberts v. Pilot Freight Carriers, 273 N.C. 600, 160 S.E.2d 712 (1968); Key v. Merritt-Holland Welding Supplies, 273 N.C. 609, 160 S.E.2d 687 (1968); Smith v. Perdue, 7 N.C. App. 314, 172 S.E.2d 246 (1970); Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

Cited in Smith v. Carolina Coach Co., 214 N.C. 314, 199 S.E. 90 (1938); Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384 (1939); Matheny v. Central Motor Lines, 233 N.C. 673, 65 S.E.2d 361 (1951); Morrisette v. A.G. Boone Co., 235 N.C. 162, 69 S.E.2d 239 (1952); Aldridge v. Hasty, 240 N.C. 353, 82 S.E.2d 331 (1954); Emerson v. Munford, 242 N.C. 241, 87 S.E.2d 306 (1955); Hollowell v. Archbell, 250 N.C. 716, 110 S.E.2d 262 (1959); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964); Correll v. Gaskins, 263 N.C. 212, 139 S.E.2d 202 (1964); Vann v. Hayes, 266 N.C. 713, 147 S.E.2d 186 (1966); Underwood v. Gay, 268 N.C. 715, 151 S.E.2d 596 (1966); Kanoy v. Hinshaw, 273 N.C. 418, 160 S.E.2d 296 (1968); Hall v. Kimber, 6 N.C. App. 669, 171 S.E.2d 99 (1969); Bateman v. Elizabeth City State College, 5 N.C. App. 168, 167 S.E.2d 838 (1969); Brown v. Boren Clay Prods. Co., 5 N.C. App. 418, 168 S.E.2d 452 (1969); Kinney v. Goley, 6 N.C. App. 182, 169 S.E.2d 525 (1969); Strickland v. Powell, 279 N.C. 183, 181 S.E.2d 464 (1971); Odell v. Lipscomb, 12 N.C. App. 318, 183 S.E.2d 299 (1971); Southwire Co. v. Long Mfg. Co., 12 N.C. App. 335, 183 S.E.2d 253 (1971); Teachey v. Woolard, 16 N.C. App. 249, 191 S.E.2d 903 (1972); Cardwell v. Ware, 36 N.C. App. 366, 243 S.E.2d 915 (1978); Jones v. Morris, 42 N.C. App. 10, 255 S.E.2d 619 (1979); Harris v. Bridges, 46 N.C. App. 207, 264 S.E.2d 804 (1980); Davis v. Gamble, 55 N.C. App. 617, 286 S.E.2d 629 (1982); Cunningham v. Brown, 62 N.C. App. 239, 302 S.E.2d 822 (1983); Williams v. Hall, 100 N.C. App. 655, 397 S.E.2d 767 (1990); Body ex rel. Body v. Varner, 107 N.C. App. 219, 419 S.E.2d 208 (1992); Williams v. Davis, 157 N.C. App. 696, 580 S.E.2d 85, 2003 N.C. App. LEXIS 936 (2003); State v. Barnard, 362 N.C. 244, 658 S.E.2d 643, 2008 N.C. LEXIS 338 (2008).

II. NEGLIGENCE AND PROXIMATE CAUSE.

Violation as Factor to Be Considered in Determining Breach of Duty to Exercise Due Care. — Since a violation of this section is no longer to be considered negligence per se, the jury, if they find as a fact that this section was violated, must consider the violation along with all other facts and circumstances, and decide whether, when so considered, the violator has breached his common-law duty of exercising ordinary care. Kinney v. Goley, 4 N.C. App. 325, 167 S.E.2d 97, reaffirmed on rehearing, 6 N.C. App. 182, 169 S.E.2d 525 (1969); Harris v. Freeman, 18 N.C. App. 85, 196 S.E.2d 48 (1973); Mintz v. Foster, 35 N.C. App. 638, 242 S.E.2d 181 (1978); Spruill v. Summerlin, 51 N.C. App. 452, 276 S.E.2d 736 (1981).

Since a violation of this safety statute is not negligence per se, triers of the facts must consider all relevant facts and attendant circumstances in deciding whether the violator has breached his common-law duty to exercise due care. Sharpe v. Grindstaff, 329 F. Supp. 405 (M.D.N.C. 1970), rev'd on other grounds, 446 F.2d 152 (4th Cir. 1971).

Although subsection (d) of this section provides that the violation of this section is not negligence per se, a violation of subsection (a) of this section may be considered along with all other facts and circumstances in determining whether defendant driver breached duty of exercising ordinary, reasonable care. Phillips v. United States, 650 F. Supp. 114 (W.D.N.C. 1986).

While a driver's failure to meet the statutory requirements is not negligence per se, it must be considered along with all the other facts and circumstances as evidence of the driver's alleged contributory negligence. Blankley v. Martin, 101 N.C. App. 175, 398 S.E.2d 606 (1990).

For cases holding violation of this section to be negligence per se, decided prior to the 1965 amendment to this section, see Murphy v. Asheville-Knoxville Coach Co., 200 N.C. 92, 156 S.E. 550 (1931); Holland v. Strader, 216 N.C. 436, 5 S.E.2d 311 (1939); Bechtler v. Bracken, 218 N.C. 515, 11 S.E.2d 721 (1940); Conley v. Pearce-Young-Angel Co., 224 N.C. 211, 29 S.E.2d 740 (1944); Banks v. Shepard, 230 N.C. 86, 52 S.E.2d 215 (1949); Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950); Grimm v. Watson, 233 N.C. 65, 62 S.E.2d 538 (1950); Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951); Bradham v. McLean Trucking Co., 243 N.C. 708, 91 S.E.2d 891 (1956); Queen City Coach Co. v. Fultz, 246 N.C. 523, 98 S.E.2d 860 (1957); Hall v. Carroll, 255 N.C. 326, 121 S.E.2d 547 (1961); Tart v. Register, 257 N.C. 161, 125 S.E.2d 754 (1962);

Wiggins v. Ponder, 259 N.C. 277, 130 S.E.2d 402 (1963); Cowan v. Murrows Transf., Inc., 262 N.C. 550, 138 S.E.2d 228 (1964); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965); Lowe v. Futrell, 271 N.C. 550, 157 S.E.2d 92 (1967).

For cases holding that whether the violation of this section was a proximate cause of injury for the jury, see Holland v. Strader, 216 N.C. 436, 5 S.E.2d 311 (1939); White v. Lacey, 245 N.C. 364, 96 S.E.2d 1 (1957).

Stopping on Traveled Portion of Highway Does Not Necessarily Constitute Negligence. — The mere fact that a driver stops his vehicle on the traveled portion of a highway for the purpose of receiving or discharging a passenger, nothing else appearing, does not constitute negligence. Strickland v. Powell, 10 N.C. App. 225, 178 S.E.2d 136 (1970), aff'd, 279 N.C. 183, 181 S.E.2d 464 (1971).

But Must Be Done with Regard to Requirements of Section. — The stopping on a bus on the traveled portion of the highway to receive or discharge a passenger must be done with due regard to the provisions of this section. Banks v. Shepard, 230 N.C. 86, 52 S.E.2d 215 (1949).

Evidence that defendant driver gave signal of intention to turn left by an electrical signal device operated by a lever on the steering column was competent to be considered by the jury on the issue of the contributory negligence of such operator, notwithstanding the absence of evidence that such signal device had been approved by the Department (now Division) of Motor Vehicles, since, apart from this section, it is for the jury to decide whether the signal was in fact given, whether it indicated a left turn by the operator of the car, and whether the driver of the other car was negligent in failing to observe and heed such signal. Queen City Coach Co. v. Fultz, 246 N.C. 523, 98 S.E.2d 860 (1957).

Evidence Held Insufficient to Show that Mechanical or Electrical Signal Was Given. — Where plaintiff, a passenger in a bus, was injured when a truck following the bus collided with the rear thereof when the bus had stopped on the highway to permit a passenger to alight, and defendant bus company admitted that its driver gave no hand signal, but introduced evidence of a rule of the Utilities Commission as to the required lighting equipment on motor vehicles, along with evidence that the bus had been inspected and approved by an inspector of the Utilities Commission, and a certificate of title issued by the Department (now Division) of Motor Vehicles, together with testimony of the driver that the stoplights were on only when the brakes were on and then only if one stopped the bus suddenly, and that the driver slowed down gradually before stopping the bus, it was held that the evidence was insufficient to show that a mechanical or electrical signal as required by this section was given, and motion to nonsuit was properly denied. Banks v. Shepard, 230 N.C. 86, 52 S.E.2d 215 (1949).

Evidence Held Sufficient to Show Negligence. — Evidence to the effect that defendant, traveling in the opposite direction, turned left to enter a private driveway and stopped with her vehicle partially blocking plaintiff's lane of travel, causing plaintiff to swerve off the hard surface to avoid a collision, was sufficient to show negligence by defendant under subsection (a) of this section. Black v. Wilkinson, 269 N.C. 689, 153 S.E.2d 333 (1967).

Evidence of Negligence Held Sufficient for Jury. — Evidence that defendant driver attempted to turn left into a dirt road without giving a plain and visible signal of his intention to do so, did not keep a proper lookout, and did not heed plaintiff's warning horn, resulting in a collision with plaintiff's vehicle as plaintiff, traveling in the same direction, was attempting to pass, was sufficient to be submitted to the jury on the issue of negligence. Eason v. Grimsley, 255 N.C. 494, 121 S.E.2d 885 (1961).

Intervening Negligence Held to Insulate Primary Negligence. — Where plaintiff's evidence tended to show that plaintiff was standing at the rear of a car parked completely off the hard surface on the right, that a car traveling at a speed of 45 to 50 miles per hour slowed down rapidly as it came near the parked car, that the driver of a truck following 250 feet behind the car, when he saw the brake light on the car, immediately applied his brakes without effect and then applied his hand brake and skidded off the highway, striking the rear of the car and the plaintiff, oncoming traffic preventing the truck driver from turning to the left, and the driver of the truck testified that had his brakes been working properly he did not think he would have had any trouble stopping the truck, it was held that even conceding negligence on the part of the driver of the car in violating this section, the intervening negligence of the driver of the truck, in driving at excessive speed or in operating the truck with defective brakes, insulated any negligence of the driver of the car as a matter of law, since neither the intervening negligence nor the resulting injury could have been reasonably anticipated by the driver of the car from his act in rapidly decreasing his speed. Warner v. Lazarus, 229 N.C. 27, 47 S.E.2d 496 (1948).

Contributory Negligence Held to Bar Recovery. — Where plaintiff's tractor-trailer, following defendants' tractor-trailer on the highway at night, rammed the rear of defendants' vehicle when it suddenly stopped on the highway, and plaintiff's allegations and evidence were to the effect that defendants' vehicle suddenly stopped without signal by hand or electrical device, while plaintiff's driver testified that he was familiar with the highway and knew he was approaching an intersection where traffic was congested, that he was traveling between 110 and 115 feet behind defendants' vehicle, that he did not see that it had stopped until he was within 75 feet of it, and that he immediately put on his brakes but was too close to stop before hitting its rear, it was held that plaintiff's evidence disclosed contributory negligence as a matter of law, barring recovery. Fawley v. Bobo, 231 N.C. 203, 56 S.E.2d 419 (1949).

Even though the driver of a truck which collided with plaintiff's automobile failed to observe the requirements of this and other sections, where collision occurred when plaintiff was attempting to overtake and pass the truck proceeding in the same direction at the intersection of highways, without permission to do so by a traffic or police officer, in violation of provisions of G.S. 20-150(c), contributory negligence on the part of the plaintiff barred his recovery. Cole v. Fletcher Lumber Co., 230 N.C. 616, 55 S.E.2d 86 (1949).

Plaintiff truck driver was held guilty of contributory negligence in turning left without seeing that the movement could be made in safety, and he could not recover damages from colliding with a tractor-trailer. Gasperson v. Rice, 240 N.C. 660, 83 S.E.2d 665 (1954).

Plaintiff's admitted violation of this section in making a "U" turn to his left without ascertaining that he could do so in safety and without giving required signal was a proximate cause of the collision, justifying a nonsuit against him. Tallent v. Talbert, 249 N.C. 149, 105 S.E.2d 426 (1958).

For case holding that the evidence did not compel conclusion that sole proximate cause of collision was illegal left turn made by driver of other car, see Jernigan v. Jernigan, 236 N.C. 430, 72 S.E.2d 912 (1952).

For case holding that failure to give hand signal was not the proximate cause of collision, see Cozart v. Hudson, 239 N.C. 279, 78 S.E.2d 881 (1954).

For cases holding that allegations of complaint showed that sole proximate cause of collision was negligent left turn made by first defendant across path of second defendant, despite allegations that second defendant was concurrently negligent, see Hout v. Harvell, 270 N.C. 274, 154 S.E.2d 41 (1967); Mabe v. Green, 270 N.C. 276, 154 S.E.2d 91 (1967).

Plaintiff's failure to again look for following or passing vehicles before beginning the left turn was evidence that she violated this statute and was contributorily negligent. Since the evidence does not indicate how far following vehicles could be seen, ascertaining when 115 feet away that no vehicle was behind her and signaling for a left turn did not necessarily meet the statute's requirements. Church v. Greene, 100 N.C. App. 675, 397 S.E.2d 649 (1990).

Instructions Held Erroneous. — An instruction stating in substance that defendants had to prove first that plaintiff failed to ascertain safe turning conditions and, having proved this, had to prove that plaintiff failed to signal his intention to turn, and that the failure to signal was the proximate cause of the collision, placed an unwarranted burden on defendants. Mitchell v. White, 256 N.C. 437, 124 S.E.2d 137 (1962).

Where there was no evidence that defendant driver failed to give the signal for a left turn, as required by this section, and no evidence that defendant was traveling at excessive speed at the time, it was error for the court to instruct the jury upon the issue of the driver's negligence in regard to turn signals and excessive speed. Textile Motor Freight, Inc. v. DuBose, 260 N.C. 497, 133 S.E.2d 129 (1963).

§ 20-155. Right-of-way.

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.

(c) The driver of any vehicle upon a highway within a business or residence district shall yield the right-of-way to a pedestrian crossing such highway within any clearly marked crosswalk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices.

(d) The driver of any vehicle approaching but not having entered a traffic circle shall yield the right-of-way to a vehicle already within such traffic circle. (1937, c. 407, s. 117; 1949, c. 1016, s. 2; 1955, c. 913, ss. 6, 7; 1967, c. 1053; 1973, c. 1330, s. 20.)

Legal Periodicals. — For brief comment on right-of-way as between vehicles on a paved road and those entering from unpaved roads, see 34 N.C.L. Rev. 81 (1955).

CASE NOTES

I. In General.
II. Intersections Generally.
III. Left Turns.
IV. Right-of-Way of Pedestrians.

I. IN GENERAL.

Applied in Wooten v. Smith, 215 N.C. 48, 200 S.E. 921 (1939); Primm v. King, 249 N.C. 228, 106 S.E.2d 223 (1958); Greene v. Meredith, 264 N.C. 178, 141 S.E.2d 287 (1965); Mims v. Dixon, 272 N.C. 256, 158 S.E.2d 91 (1967); White v. Hester, 1 N.C. App. 410, 161 S.E.2d 611 (1968); Douglas v. Booth, 6 N.C. App. 156, 169 S.E.2d 492 (1969); U.S. Indus., Inc. v. Tharpe, 47 N.C. App. 754, 268 S.E.2d 824 (1980); Cucina v. City of Jacksonville, 2000 N.C. App. LEXIS 310 (N.C. App. Apr. 4, 2000); Cucina v. City of Jacksonville, 138 N.C. App. 99, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000).

Cited in Leary v. Norfolk S. Bus Corp., 220 N.C. 745, 18 S.E.2d 426 (1942); Bobbitt v. Haynes, 231 N.C. 373, 57 S.E.2d 361 (1950); Smith v. Buie, 243 N.C. 209, 90 S.E.2d 514 (1955); Jordan v. Blackwelder, 250 N.C. 189, 108 S.E.2d 429 (1959); Kelly v. Ashburn, 256 N.C. 338, 123 S.E.2d 775 (1962); Farrow v. Baugham, 266 N.C. 739, 147 S.E.2d 167 (1966); Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968); Hall v. Kimber, 6 N.C. App. 669, 171 S.E.2d 99 (1969); Hathcock v. Lowder, 16 N.C. App. 255, 192 S.E.2d 124 (1972); North Carolina v. Ivory, 906 F.2d 999 (4th Cir. 1990); Lonon v. Talbert, 103 N.C. App. 686, 407 S.E.2d 276 (1991).

II. INTERSECTIONS GENERALLY.

"Right-of-Way" Defined. — The expression "right-of-way" has been interpreted to mean the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which it is moving, in preference to another vehicle approaching from a different direction into its path. Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953).

Right-of-Way Is Not Absolute. — One who has the right-of-way at an intersection does not have the absolute right-of-way in the sense that he is not bound to use ordinary care in the exercise of his right. When he sees, or by the exercise of due care should see, that an approaching driver cannot or will not observe the traffic laws, he must use such care as an ordinarily prudent person would use under the same or similar circumstances to avoid collision and injury. His duty under such circumstances consists in keeping a reasonable lookout, keeping his vehicle under control, and taking reasonable precautions to avoid injury to persons and property. Carr v. Lee, 249 N.C. 712, 107 S.E.2d 544 (1959).

Even though a driver has the right-of-way at an intersection, it is incumbent upon him, in approaching and traversing the intersection, to drive at a speed no greater than is reasonable under the conditions then existing, to keep his vehicle under control, to keep a reasonably careful lookout and to take such action as a reasonably prudent person would take to avoid collision when the danger of one is discovered or should have been discovered. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Section Applies to Intersections Not Covered by Other Rules. — This section announces the rule with respect to use of intersections not covered by other rules. McEwen Funeral Serv. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

Section Inapplicable Where One Street Is Favored by Lights, Signs, etc. — Where by reason of automatic traffic lights, stop or caution signs, or other devices, one street at an intersection is favored over the other, and one street is thereby made permanently or intermittently dominant and the other servient, this section has no application. White v. Phelps, 260 N.C. 445, 132 S.E.2d 902 (1963).

Ordinarily, when traffic lights are installed at an intersection, the relative rights of motorists approaching on intersecting streets are determinable with reference thereto rather than by the provisions of this section. Cogdell v. Taylor, 264 N.C. 424, 142 S.E.2d 36 (1965).

Where there are no stop signs or traffic control devices at an intersection, neither street is favored over the other, notwithstanding that one is paved and the other is not, and the right-of-way at such intersection is governed by subsections (a) and (b) of this section. Mallette v. Ideal Laundry & Dry Cleaners, Inc., 245 N.C. 652, 97 S.E.2d 245 (1957); Rhyne v. Bailey, 254 N.C. 467, 119 S.E.2d 385 (1961).

And This Section Applies. — Absent traffic lights, the relative rights of motorists are determinable with reference to this section. Cogdell v. Taylor, 264 N.C. 424, 142 S.E.2d 36 (1965).

Effect of Disappearance or Removal of Stop Sign. — Where driver on a highway which a stop sign had designated as the dominant highway knew that the stop sign had been so erected, but did not know of its disappearance or removal, and driver of vehicle on the other highway, which the stop sign had designated as the servient highway, did not know there had ever been such a a stop sign erected at the intersection, and approached the intersection from the right of the other driver, the removal of the stop sign would not take away the right of the driver of the vehicle on the highway designated by the sign as the dominant highway to treat the highway as such and to proceed into the intersection on the assumption that the other vehicle approaching from the right would yield the right-of-way to him. The responsibility of the driver of the vehicle on the highway designated by the sign as the servient highway, who did not know the highway had ever been so designated, would be judged in the light of conditions confronting him, namely, an unmarked intersection at which the other vehicle was approaching from his left. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Effect of Prior Knowledge of Malfunctioning Traffic Signal. — Where a traffic signal was malfunctioning, and each party knew how the traffic signal malfunctioned on his street, the rights and duties of the drivers would be determined on the basis of their prior knowledge and not on the objective condition of the intersection; hence, defendant was not entitled to a peremptory instruction that the vehicle approaching from the right had the right-of-way under this section. Bledsoe v. Gaddy, 10 N.C. App. 470, 179 S.E.2d 167 (1971).

No Distinction Between "T" Intersection and One at Which Highways Cross. — With reference to the right-of-way as between two vehicles approaching and entering an intersection, the law of this State makes no distinction between a "T" intersection and one at which two highways cross each other completely. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Subsection (a) Inapplicable to Vehicles Proceeding in Opposite Directions. — Where motorists are proceeding in opposite directions and meeting at an intersection, subsection (a) of this section has no application. Fleming v. Drye, 253 N.C. 545, 117 S.E.2d 416 (1960).

Where motorists are proceeding in opposite directions and meeting at an intersection controlled by automatic traffic lights, subsection (a) of this section has no application. Shoe v. Hood, 251 N.C. 719, 112 S.E.2d 543 (1960); Wiggins v. Ponder, 259 N.C. 277, 130 S.E.2d 402 (1963); Rathburn v. Sorrells, 5 N.C. App. 212, 167 S.E.2d 800 (1969).

Applicability of Subsection (a) to Vehicles Entering Intersection at "Approximately Same Time." — Subsection (a) of this section does not apply unless two vehicles approach or enter intersection at approximately the same time. When that condition does not exist, the vehicle first reaching and entering the intersection has the right-of-way over a vehicle subsequently reaching it, irrespective of their directions of travel; and it is the duty of the driver of the latter vehicle to delay his progress so as to allow the first arrival to pass in safety. State v. Hill, 233 N.C. 61, 62 S.E.2d 532 (1950); Brady v. Nehi Beverage Co., 242 N.C. 32, 86 S.E.2d 901 (1955); Downs v. Odom, 250 N.C. 81, 108 S.E.2d 65 (1959).

The test of the applicability of subsection (a) of this section is whether both vehicles approach or reach the intersection at "approximately the same time," and the right-of-way is not determined by a fraction of a second. Hathcock v. Lowder, 16 N.C. App. 255, 192 S.E.2d 124, cert. denied, 282 N.C. 426, 192 S.E.2d 836 (1972).

When Vehicles Approach or Enter Intersection at Approximately Same Time. — Two motor vehicles approach or enter an intersection at approximately the same time within the purview of these rules whenever their respective distances from the intersection, their relative speeds, and the other attendant circumstances show that the driver of the vehicle on the left should reasonably apprehend that there is danger of collision unless he delays his progress until the vehicle on the right has passed. State v. Hill, 233 N.C. 61, 62 S.E.2d 532 (1950); Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953); Brady v. Nehi Beverage Co., 242 N.C. 32, 86 S.E.2d 901 (1955); Taylor v. Brake, 245 N.C. 553, 96 S.E.2d 686 (1957); Moore v. Butler, 10 N.C. App. 120, 178 S.E.2d 35 (1970); Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Approach or Entry at Same Time Not Shown. — It could not be held as a matter of law that plaintiff's automobile and defendants' truck approached or entered intersection "at approximately the same time" when the latter was 125 feet away from the intersection when the former was entering it, and when plaintiff's automobile had crossed within four feet of the opposite curb when defendants' truck collided therewith. Crone v. Fisher, 223 N.C. 635, 27 S.E.2d 642 (1943).

Where defendant's automobile came to a stop at an intersection 23 feet wide while the automobile in which decedent was traveling was more than 125 feet away, and a collision occurred when defendant attempted to cross the intersection, the two vehicles did not approach or enter the intersection at approximately the same time, and therefore the automobile of the decedent did not have the right-of-way. State v. Hill, 233 N.C. 61, 62 S.E.2d 532 (1950).

Duty of Driver Approaching from Left. — If the driver of the automobile on the left approaching an intersection sees, or in the exercise of reasonable prudence should see, an automobile approaching from his right in such a manner that apparently the two automobiles will reach the intersection at approximately the same time, it is his duty to decrease his speed, bring his automobile under control, and if necessary stop, and to yield the right-of-way to the driver of the automobile on his right in order to enable him to proceed and thus avoid a collision. The law imposes this duty on the driver of an automobile approaching an intersecting highway unless the automobile coming from his right on the intersecting highway is a sufficient distance away to warrant the assumption that he can proceed before the other automobile, operated at a reasonable speed, reaches the crossing. Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953).

Where two drivers approach an uncontrolled intersection at the same time, it is the duty of the driver on the left to yield the right-of-way to the vehicle on his right. Wilder v. Harris, 266 N.C. 82, 145 S.E.2d 393 (1965).

When the driver of a motor vehicle on the left comes to an intersection and finds no one approaching it on the other street within such distance as reasonably to indicate danger of collision, he is under no obligation to stop or wait, but may proceed to use such intersection as a matter of right. Carr v. Stewart, 252 N.C. 118, 113 S.E.2d 18 (1960).

Right to Assume That Driver Approaching from Left Will Yield Right-of-Way. — If two automobiles approach an intersection at approximately the same time, the driver of the automobile on the right, in approaching the intersection, has the right to assume that the driver of the automobile coming from the left will yield the right-of-way and stop or slow down sufficiently to permit the other to pass in safety. Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953). See also, Finch v. Ward, 238 N.C. 290, 77 S.E.2d 661 (1953); Brady v. Nehi Beverage Co., 242 N.C. 32, 86 S.E.2d 901 (1955); Neal v. Stevens, 266 N.C. 96, 145 S.E.2d 325 (1965).

A driver with the right-of-way at an intersection is under no duty to anticipate disobedience of law or negligence on the part of others; rather, in the absence of anything which puts him on notice, or should put him on notice, to the contrary, he is entitled to assume, and to act on the assumption, that others will obey the law, exercise reasonable care and yield the right-of-way. Carr v. Lee, 249 N.C. 712, 107 S.E.2d 544 (1959).

A driver having the right-of-way may act upon the assumption, in the absence of notice to the contrary, that the other motorist will recognize his right-of-way and grant him a free passage over the intersection. Carr v. Stewart, 252 N.C. 118, 113 S.E.2d 18 (1960).

When two drivers approach an uncontrolled intersection at the same time, the driver on the right has the right to assume, and to act on the assumption, until given notice to the contrary, that the operator of any vehicle approaching the intersection to the left would obey the law and yield the right-of-way. Wilder v. Harris, 266 N.C. 82, 145 S.E.2d 393 (1965).

Nothing else appearing, the driver of a vehicle having the right-of-way at an intersection is entitled to assume and to act, until the last moment, on the assumption that the driver of another vehicle, approaching the intersection, will recognize his right-of-way and will stop or reduce his speed sufficiently to permit him to pass through the intersection in safety. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Effect of Speed of Driver on Right on Application of Rule. — Fact that defendant's automobile, which was approaching from plaintiff's right, was being driven at a speed of 35 to 40 miles per hour in a residential district with no other vehicle in view would not prevent the application of the rule as to right-of-way for automobiles entering an intersection at the same time, in the absence of evidence that the speed of defendant's automobile proximately caused the collision. Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953).

Right-of-Way on Entering Intersection Ahead of Other Car. — If plaintiff's automobile enters intersection of two streets at a time when defendant's approaching car is far enough away to justify a person in believing that, in the exercise of reasonable care and prudence, he may safely pass over the intersection ahead of the oncoming car, plaintiff has the right-of-way and it is the duty of defendant to reduce his speed and bring his car under control and yield. Yellow Cab Co. v. Sanders, 223 N.C. 626, 27 S.E.2d 631 (1943).

Where defendant's truck entered intersection before the automobile in which plaintiff was riding reached the intersection, and the truck approached the intersection from the automobile's right side of the road, the truck had the right-of-way. Brady v. Nehi Beverage Co., 242

N.C. 32, 86 S.E.2d 901 (1955).

Right-of-Way Where Vehicle on Left Has Already Entered Intersection. — This section does not apply if the driver on the right, at the time he approaches intersection and before reaching it, in the exercise of reasonable prudence ascertains that the vehicle on his left has already entered the intersection. Kennedy v. Smith, 226 N.C. 514, 39 S.E.2d 380 (1946); Taylor v. Brake, 245 N.C. 553, 96 S.E.2d 686 (1957).

If the automobile approaching from the left reaches intersection first and has already entered the intersection the driver of the automobile on the right is under the duty to permit the other automobile to pass in safety. Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953).

Rule Where Driver Has Brought Automobile to Complete Stop. — The rule as to right-of-way prescribed by this section applies to moving vehicles approaching an intersection at approximately the same time. Where the driver has already brought his automobile to a complete stop, thereafter the duty would devolve upon him to exercise due care to observe approaching vehicles and to govern his conduct accordingly. One who is required to stop before entering a highway should not proceed, with oncoming vehicles in view, until in the exercise of due care he can determine that he can do so with reasonable assurance of safety. Matheny v. Central Motor Lines, 233 N.C. 673, 65 S.E.2d 361 (1951); Badders v. Lassiter, 240 N.C. 413, 82 S.E.2d 357 (1954).

A motorist who does not keep a lookout is nevertheless charged with having seen what he could have seen had he looked, and his liability to one injured in a collision with his vehicle is determined as it would have been had he looked, observed the prevailing conditions and continued to drive as he did. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

Recovery Held Barred by Failure to Maintain Proper Lookout. — Where plaintiff's testimony indicated that he did not slow down and yield the right-of-way to defendant for the reason that plaintiff was not maintaining a proper lookout and did not see defendant's vehicle, and where plaintiff's testimony further revealed that, while he looked before entering the intersection, he did so at a point where he could not see vehicles approaching the intersection from his right, his admitted conduct prohibited any recovery. Moore v. Butler, 10 N.C. App. 120, 178 S.E.2d 35 (1970).

Evidence Held Sufficient to Go to Jury. — In an action to recover damages resulting from a collision at a street intersection, plaintiff's evidence that she entered intersection first and that defendants entered the intersection from her left was sufficient to take the case to the jury over defendants' motion to nonsuit. Harrison v. Kapp, 241 N.C. 408, 85 S.E.2d 337 (1955).

For case holding failure to yield right-of-way proximate cause of collision, see Freeman v. Preddy, 237 N.C. 734, 76 S.E.2d 159 (1953).

As to evidence supporting inference that defendant negligently failed to yield right-of-way, see Donlop v. Snyder, 234 N.C. 627, 68 S.E.2d 316 (1951); Tripp v. Harris, 260 N.C. 200, 132 S.E.2d 322 (1963).

Issue of Negligence Raised by Evidence. — Evidence that defendant failed to yield the right-of-way to plaintiff, who was on the right, and that defendant was driving at 50 miles per hour through the intersection, raised the issue of defendant's negligence, and motion for nonsuit at the close of all the evidence was properly denied. Price v. Gray, 246 N.C. 162, 97 S.E.2d 844 (1957).

Instruction Upheld. — Under this section, where damages were sought for defendant's negligent driving at a street intersection, and there was evidence tending to show that defendant was approaching the intersection at an unlawful rate of speed and did not slow up before collision with another car, an instruction correctly charging the rule of the right-of-way if both cars approached the intersection simultaneously and the rule that if one car was already in the intersection it was the duty of the driver of the other car to slow down and permit it to pass would not be held for error. Piner v. Richter, 202 N.C. 573, 163 S.E. 561 (1932).

Court Not Required to Read Applicable Statutes to Jury. — Where the trial court charges the law in regard to the statutory provisions in regard to the right-of-way at an intersection, and applies the law to the evidence in the case, an objection on the ground that the court failed to charge on the statutes is without merit, if not being required that the court read the applicable statutes to the jury. Kennedy v. James, 252 N.C. 434, 113 S.E.2d 889 (1960).

As to exception of emergency ambulances from requirements of this section, see Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965).

III. LEFT TURNS.

Duty of Driver Turning Left. — The driver desiring to turn left at an intersection may move into the intersection when the signal facing him is green, but before turning left is charged with the duty to yield the right-of-way under this section. Hudson v. Petroleum Transit Co., 250 N.C. 435, 108 S.E.2d 900 (1959).

It is incumbent upon a motorist, before making a left turn at an intersection, to give a plainly visible signal of his intention to turn and to ascertain that the movement can be made in safety, without regard to which vehicle enters the intersection first. Wiggins v. Ponder, 259 N.C. 277, 130 S.E.2d 402 (1963).

Where cars are meeting at an intersection and one intends to turn across the lane of travel of the other, subsection (b) of this section and subsection (a) of G.S. 20-154 apply, and the driver making the turn is under duty to give a plainly visible signal of his intention to turn, and to ascertain that such movement can be made in safety, without regard to which vehicle entered the intersection first. Fleming v. Drye, 253 N.C. 545, 117 S.E.2d 416 (1960); King v. Sloan, 261 N.C. 562, 135 S.E.2d 556 (1964). See also, Fowler v. Atlantic Co., 234 N.C. 542, 67 S.E.2d 496 (1951).

Duty Where Turning Vehicle Has Already Entered Intersection. — Under subsection (b) of this section, the vehicle first reaching an intersection which has no stop sign or traffic signal has the right-of-way over a vehicle subsequently reaching it, whether the vehicle in the intersection is proceeding straight ahead or turning in either direction; and it is the duty of the driver of the vehicle not having entered the intersection to delay his progress and allow the vehicle which first entered the intersection to pass in safety. Carr v. Stewart, 252 N.C. 118, 113 S.E.2d 18 (1960).

If plaintiff was already in the intersection, giving the statutory left-turn signal, at a time when defendant was 150-feet away, it was defendant's duty to delay her entrance into the intersection until plaintiff had cleared it entirely. Mayberry v. Allred, 263 N.C. 780, 140 S.E.2d 406 (1965).

Right to Assume that Other Drivers Will Not Block Lane by Left Turn. — A driver intending to go straight through an intersection has the right to assume, and to act on the assumption, that all other travelers will observe the law and will not block his lane of travel by a left turn without first ascertaining that such move can be made in safety. Harris v. Parris, 260 N.C. 524, 133 S.E.2d 195 (1963).

A through driver is required to give notice of any intended change in direction through an intersection, and in the absence of such notice, other travelers are required to assume that he intends to continue through in his proper lane of traffic. Harris v. Parris, 260 N.C. 524, 133 S.E.2d 195 (1963).

Subsection (b) Held Applicable. — Where, at the time they were struck, defendants had fully complied with G.S. 20-158(a), subsection (b) of this section was then applicable. Todd v. Shipman, 12 N.C. App. 650, 184 S.E.2d 403 (1971).

For case holding pleadings and evidence insufficient to support plaintiff's theory that plaintiff had the right-of-way by virtue of subsection (b) of this section, see Taylor v. Brake, 245 N.C. 553, 96 S.E.2d 686 (1957).

Prima Facie Case of Negligence. — Where it may be inferred from plaintiff's evidence that defendant failed to observe either of the statutory requirements of G.S. 20-154(a) or subsection (b) of this section and that injury was suffered by plaintiff because of such failure, plaintiff has made out a prima facie case of actionable negligence. Wiggins v. Ponder, 259 N.C. 277, 130 S.E.2d 402 (1963).

IV. RIGHT-OF-WAY OF PEDESTRIANS.

Pedestrian's Right-of-Way Limited by Green Light in Presence of Traffic Signals. — The right-of-way given a pedestrian by subsection (c) of this section at an intersection where there is no traffic-control signal is limited at an intersection where there is a traffic-control signal to the pedestrian having the right-of-way only when he is moving with the green light. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969), decided under this section and § 20-173(a) as it read prior to its amendment in 1973.

But Right to Proceed Is Superior to Right to Turn. — The pedestrian crossing with a favorable light is assisted by the principle that the right to proceed is superior to the right to turn. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

So That Pedestrian's Rights Are Superior to Turning Motorist's Where Lights Are Favorable. — Under subsection (c) of this section, where a pedestrian and a turning motorist are both proceeding at an intersection under favorable signal lights, the right of the pedestrian to proceed is superior to that of the turning motorist. Duke v. Meisky, 12 N.C. App. 329, 183 S.E.2d 292 (1971).

And Pedestrian's Right-of-Way Is Not Impaired When He Crosses with Lights. — Subsection (c) of this section may be construed to mean that a pedestrian's crosswalk right-of-way is not impaired when the movement of the pedestrian is in accord with the traffic lights. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Nor Is Pedestrian's Right-of-Way on Green Light Subordinated to that of Turning Motorist. — The effect of the exception in subsection (c) of this section as to intersections where traffic is regulated by traffic officers or traffic direction devices is not to subordinate the right-of-way of a pedestrian moving on a green light to that of a turning motorist. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

§ 20-156. Exceptions to the right-of-way rule.

(a) The driver of a vehicle about to enter or cross a highway from an alley, building entrance, private road, or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered.

(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness coordinators when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance or vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way. (1937, c. 407, s. 118; 1971, cc. 78, 106; 1973, c. 1330, s. 21; 1977, c. 52, s. 4; c. 438, s. 3; 1985, c. 427; 1989, c. 537, s. 3.)

Legal Periodicals. — For note on liability of municipality for accident involving fire truck responding to an emergency call for an inhalator, see 30 N.C.L. Rev. 89 (1951).

CASE NOTES

I. In General.
II. Entry or Crossing of Highway from Private Road, etc.
III. Right-of-Way of Emergency Vehicles.

I. IN GENERAL.

Applied in Nantz v. Nantz, 255 N.C. 357, 121 S.E.2d 561 (1961); State v. Gurley, 257 N.C. 270, 125 S.E.2d 445 (1962); O'Berry v. Perry, 266 N.C. 77, 145 S.E.2d 321 (1965); Williams v. Bethany Volunteer Fire Dep't, 307 N.C. 430, 298 S.E.2d 352 (1983).

Cited in Bobbitt v. Haynes, 231 N.C. 373, 57 S.E.2d 361 (1950); Brady v. Nehi Beverage Co., 242 N.C. 32, 86 S.E.2d 901 (1955); Fleming v. Drye, 253 N.C. 545, 117 S.E.2d 416 (1960); Payne v. Lowe, 2 N.C. App. 369, 163 S.E.2d 74 (1968); Campbell v. O'Sullivan, 4 N.C. App. 581, 167 S.E.2d 450 (1969); White v. Reilly, 15 N.C. App. 331, 190 S.E.2d 303 (1972); Hathcock v. Lowder, 16 N.C. App. 255, 192 S.E.2d 124 (1972); Williams v. Bethany Volunteer Fire Dep't, 57 N.C. App. 114, 290 S.E.2d 794 (1982); Lopez v. Snowden, 96 N.C. App. 480, 386 S.E.2d 65 (1989).

II. ENTRY OR CROSSING OF HIGHWAY FROM PRIVATE ROAD, ETC.

Regulatory Power of State. — Subsection (a) of this section and G.S. 20-165.1 illustrate the power of the State to regulate the time and manner of entering a public highway. Moses v.

State Hwy. Comm'n, 261 N.C. 316, 134 S.E.2d 664, cert. denied, 379 U.S. 930, 85 S. Ct. 327, 13 L. Ed. 2d 342 (1964).

Abutting owner's right of access must be exercised with due regard to the safety of others who have an equal right to use the highway. State Hwy. Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904, aff'd, 264 N.C. 139, 141 S.E.2d 10 (1965).

Duty of Driver Entering Highway to Look for Approaching Vehicles. — In order to comply with subsection (a) of this section, the driver of a vehicle entering a public highway from a private road or drive is required to look for vehicles approaching on such highway, at a time when this precaution may be effective. Gantt v. Hobson, 240 N.C. 426, 82 S.E.2d 384 (1954). See also, Clark v. Emerson, 245 N.C. 387, 95 S.E.2d 880 (1957).

And to Defer Entry Until It Is Safe. — In order to comply with this section, a driver entering a public highway from a private drive is required to look for vehicles approaching on such highway, at a time when the precaution may be effective, to yield the right-of-way to vehicles traveling on the highway, and to defer entry until the movement may be made in safety. C.C.T. Equip. Co. v. Hertz Corp., 256 N.C. 277, 123 S.E.2d 802 (1962); Davis v. Imes, 13 N.C. App. 521, 186 S.E.2d 641 (1972); Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

In order to comply with subsection (a) of this section, the driver of a vehicle about to enter or cross a highway from an alley, building entrance, private road or driveway is only required to look for vehicles approaching on the highway at a time when his lookout may be effective, to see what he should see, and to yield the right-of-way to vehicles on the highway which, in the exercise of reasonable care, he sees or should see are being operated at such a speed or distance as to make his entry onto the highway unsafe, by delaying his entry onto the highway until a reasonable and prudent man would conclude that the entry could be made in safety. Penland v. Greene, 289 N.C. 281, 221 S.E.2d 365 (1976); Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

Before entering a public highway from a private driveway, the operator of a motor vehicle is required to exercise due care to see that the intended movement can be made in safety. Smith v. Nunn, 257 N.C. 108, 125 S.E.2d 351 (1962).

Subsection (a) of this section does not require omniscience on the part of a motorist entering a public highway from a private drive. Penland v. Greene, 289 N.C. 281, 221 S.E.2d 365 (1976).

Applicability of Subsection (a) to Person Riding Animal. — The requirement that a person entering a public highway from a private road or drive must yield the right-of-way to vehicles on the public highway applies to a person riding an animal as well as to a person driving a motor vehicle. Watson v. Stallings, 270 N.C. 187, 154 S.E.2d 308 (1967).

Right to Assume That Driver Entering Highway Will Comply with Section. — The operator of an automobile traveling upon a public highway in this State is under no duty to anticipate that the driver of an automobile entering a public highway from a private road or drive will fail to yield the right-of-way to all vehicles on such public highway, as required by subsection (a) of this section, and in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption, even to the last moment, that the driver of the automobile so entering the public highway from a private road or drive will, in obedience to the section, yield the right-of-way. Garner v. Pittman, 237 N.C. 328, 75 S.E.2d 111 (1953).

One operating his motorcycle upon the highway was under no duty to assume that a motorist would fail to yield to him the right-of-way which was rightfully his, and he was entitled to this assumption even to the last moment. Whiteside v. Rooks, 197 F. Supp. 313 (W.D.N.C. 1961).

Right-of-Way on Dirt Ramp Across Highway. — This section is applicable at such times as a dirt ramp across a highway is open for public travel, but it does not apply at such times as the ramp is closed by the flagmen. At the times when the ramp is closed, public travelers have no right to use it, but must stop and yield the right-of-way to contractor's machinery. The flagman's signal to stop is at least equivalent to a legally established stop sign or stoplight at an intersection. C.C.T. Equip. Co. v. Hertz Corp., 256 N.C. 277, 123 S.E.2d 802 (1962).

Irrespective of subsection (a) of this section, a contractor for the improvement of an airport who was granted permission to maintain a dirt ramp across a highway was under a duty, before operating its earth-moving equipment onto and across the ramp, to exercise due care to see that such movement could be made with safety and without injury to users of the highway. C.C. Mangum, Inc. v. Gasperson, 262 N.C. 32, 136 S.E.2d 234 (1964).

Failure to yield right-of-way to traffic on a public highway did not compel a finding of contributory negligence as a matter of law when there was evidence that traffic on the highway was faced with a red traffic light and there was no evidence of anything to give notice that a motorist on the highway would not obey the traffic control signal. Galloway v. Hartman, 271 N.C. 372, 156 S.E.2d 727 (1967).

Use of Terms "Dominant" and "Servient" in Charge to Jury. — While use of the words "dominant" and "servient" may not be precisely correct in referring to the roads in question under subsection (a) of this section in instructions to the jury, where the judge instructed upon the proper principles of law applicable to each motorist, defendant was not prejudiced thereby. Penland v. Greene, 289 N.C. 281, 221 S.E.2d 365 (1976).

There is no error prejudicial to defendant in the occasional use of the term "servient highway or street" instead of "private road or drive" in the charge to the jury. Penland v. Greene, 24 N.C. App. 240, 210 S.E.2d 505 (1974), aff'd, 289 N.C. 281, 221 S.E.2d 365 (1976).

There is no error prejudicial to defendant in the occasional use of the term "servient highway or street" instead of "private road or drive" in the charge to the jury. Penland v. Greene, 24 N.C. App. 240, 210 S.E.2d 505 (1974), aff'd, 289 N.C. 281, 221 S.E.2d 365 (1976).

III. RIGHT-OF-WAY OF EMERGENCY VEHICLES.

When Emergency Vehicle Has Right-of-Way Privilege. — If the operator of an authorized emergency vehicle bona fide believes that an emergency exists which requires expeditious movement and meets the statutory test by giving warning, he is accorded the necessary privilege of the right-of-way. Williams v. Sossoman's Funeral Home, 248 N.C. 524, 103 S.E.2d 714 (1958).

When Right-of-Way Must Be Yielded to Emergency Vehicle. — No duty rests on the operator of a motor vehicle making normal use of a highway to yield the right-of-way to another vehicle on an emergency mission until an appropriate warning has been directed to him, and he has reasonable opportunity to yield his prior right. McEwen Funeral Serv. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

Right-of-Way Privileges of Emergency Vehicles Inapplicable to Intersections Controlled by Traffic Lights. — The General Assembly did not intend the right-of-way privileges accorded emergency ambulances by this section to be extended to apply to intersections controlled by automatic traffic lights. Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965); State v. Flaherty, 55 N.C. App. 14, 284 S.E.2d 565 (1981).

Right of Operator of Emergency Vehicle to Assume That Other Drivers Will Yield. — The operator of an authorized emergency vehicle, while on an emergency call, has the right to proceed upon the assumption that when the required signal by siren is given, other users of the highway will yield the right-of-way. Williams v. Sossoman's Funeral Home, 248 N.C. 524, 103 S.E.2d 714 (1958).

The audible sound which this section requires is such a sound as was in fact heard and comprehended, or which should have been heard and its meaning understood, by a reasonably prudent operator called upon to yield the right-of-way. McEwen Funeral Serv. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958); Williams v. Sossoman's Funeral Home, 248 N.C. 524, 103 S.E.2d 714 (1958).

§ 20-157. Approach of law enforcement, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near law enforcement, fire department, or rescue squad vehicle or ambulance.

(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

(c) Outside of the corporate limits of any city or town it shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than 400 feet or to drive into or park such vehicle within a space of 400 feet from where fire apparatus has stopped in answer to a fire alarm.

(d) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.

(e) It shall be unlawful for the driver of a vehicle, other than one on official business, to park and leave standing such vehicle within 100 feet of law enforcement or fire department vehicles, public or private ambulances, or rescue squad emergency vehicles which are engaged in the investigation of an accident or engaged in rendering assistance to victims of such accident.

(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se.

(g) Except as provided in subsections (a), (h), and (i) of this section, violation of this section shall be an infraction punishable by a fine of two hundred fifty dollars ($250.00).

(h) A person who violates this section and causes damage to property in the immediate area of the authorized emergency vehicle or public service vehicle in excess of five hundred dollars ($500.00), or causes injury to a law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle is guilty of a Class 1 misdemeanor.

(i) A person who violates this section and causes serious injury or death to a law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle is guilty of a Class I felony. The Division may suspend, for up to six months, the drivers license of any person convicted under this subsection. If the Division suspends a person's license under this subsection, a judge may allow the licensee a limited driving privilege for a period not to exceed the period of suspension, provided the person's license has not also been revoked or suspended under any other provision of law. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). (1937, c. 407, s. 119; 1955, cc. 173, 744; 1971, c. 366, ss. 1, 2; 1985, c. 764, s. 31; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 539, s. 372; 1994, Ex. Sess., c. 24, s. 14(c); 2001-331, s. 1; 2005-189, s. 1; 2006-259, s. 9; 2007-360, s. 1.)

§ 20-157.1. Funeral processions.

(a) As used in this section, a "funeral procession" means two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services are to be held, in which the lead vehicle is either a State or local law enforcement vehicle, other vehicle designated by a law enforcement officer or the funeral director, or the lead vehicle displays a flashing amber or purple light, sign, pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession.

(b) Each vehicle in the funeral procession shall be operated with its headlights illuminated, if so equipped, and its hazard warning signal lamps illuminated, if so equipped.

(c) The operator of the lead vehicle in a funeral procession shall comply with all traffic-control signals, but when the lead vehicle in a funeral procession has progressed across an intersection in accordance with the traffic-control sign or signal, or when directed to do so by a law enforcement officer or a designee of a law enforcement officer or the funeral director, or when the lead vehicle is a law enforcement vehicle which progresses across the intersection while giving appropriate warning by light or siren, all vehicles in the funeral procession may proceed through the intersection without stopping, except that the operator of each vehicle shall exercise reasonable care towards any other vehicle or pedestrian on the highway. An operator of a vehicle that is not part of the funeral procession shall not join the funeral procession for the purpose of securing the right-of-way granted by this subsection.

(d) Operators of vehicles in a funeral procession shall drive on the right-hand side of the roadway and shall follow the vehicle ahead as closely as reasonable and prudent having due regard for speed and existing conditions.

(e) Operators of vehicles in a funeral procession shall yield the right-of-way to law enforcement vehicles, fire protection vehicles, rescue vehicles, ambulances, and other emergency vehicles giving appropriate warning signals by light or siren and shall yield the right-of-way when directed to do so by a law enforcement officer.

(f) Operators of vehicles in a funeral procession shall proceed at the posted minimum speed, except that the operator of such vehicle shall exercise reasonable care having due regard for speed and existing conditions.

(g) The operator of a vehicle proceeding in the opposite direction as a funeral procession may yield to the funeral procession. If the operator chooses to yield to the procession, the operator must do so by reducing speed, or by stopping completely off the roadway when meeting the procession or while the procession passes, so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel without leaving their lane of traffic.

(h) The operator of a vehicle proceeding in the same direction as a funeral procession shall not pass or attempt to pass the funeral procession, except that the operator of such a vehicle may pass a funeral procession when the highway has been marked for two or more lanes of moving traffic in the same direction of the funeral procession.

(i) An operator of a vehicle shall not knowingly drive between vehicles in a funeral procession by crossing their path unless directed to do so by a person authorized to direct traffic. When a funeral procession is proceeding through a steady or strobe-beam stoplight emitting a red light as permitted by subsection (c), an operator of a vehicle that is not in the funeral procession shall not enter the intersection knowing a funeral procession is in progress, even if facing a steady or strobe-beam stoplight emitting a green light, unless the operator can do so safely without crossing the path of the funeral procession.

(j) Nothing in this section shall be construed to prevent State or local law enforcement officers from escorting funeral processions in law enforcement vehicles.

(k) A violation of this section shall not constitute negligence per se.

(*l*) To the extent that a local government unit's ordinance is in direct conflict with any part of this statute, the ordinance shall control and prevail over the conflicting part.

(m) A violation of this section shall not be considered a moving violation for purposes of G.S. 58-36-65 or G.S. 58-36-75. (1999-441, s. 1.)

§ 20-158. Vehicle control signs and signals.

(a) The Department of Transportation, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to control vehicles:

(1) At intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop at the entrance to that portion of the intersection designated as the main traveled or through highway. Stop signs may also be erected at three or more entrances to an intersection.

(2) At appropriate places other than intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop.

(3) At intersections and other appropriate places, by erecting or installing steady-beam traffic signals and other traffic control devices, signs, or signals. All steady-beam traffic signals emitting alternate red and green lights shall be arranged so that the red light in vertical-arranged signal faces shall appear above, and in horizontal-arranged signal faces shall appear to the left of all yellow and green lights.

(4) At intersections and other appropriate places, by erecting or installing flashing red or yellow lights.

(b) Control of Vehicles at Intersections. —

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2)a. When a traffic signal is emitting a steady red circular light controlling traffic approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may make a right turn.

b. Any vehicle that turns right under this subdivision shall yield the right-of-way to:

1. Other traffic and pedestrians using the intersection; and
2. Pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light.

c. Failure to yield to a pedestrian under this subdivision shall be an infraction, and the court may assess a penalty of not more than five hundred dollars ($500.00) and not less than one hundred dollars ($100.00).

d. The Department of Transportation shall collect data regarding the number of individuals who are found responsible for violations of sub-subdivision b. of this subdivision and the number of pedestrians who are involved in accidents at intersections because of a driver's failure to yield the right-of-way while turning right at a red light. The data shall include information regarding the number of disabled pedestrians, including individuals with visual or mobility-related disabilities, who are involved in right turn on red accidents. The Department shall report the data annually to the Joint Legislative Transportation Oversight Committee beginning January 1, 2006.

(2a) When a traffic signal is emitting a steady yellow circular light on a traffic signal controlling traffic approaching an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the traffic signal is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, traffic signal, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop (i) at an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

(6) When a traffic signal is not illuminated due to a power outage or other malfunction, vehicles shall approach the intersection and proceed through the intersection as though such intersection is controlled by a stop sign on all approaches to the intersection. This subdivision shall not apply if the movement of traffic at the intersection is being directed by a law enforcement officer, another authorized person, or another type of traffic control device.

(c) Control of Vehicles at Places other than Intersections. —

(1) When a stop sign has been erected or installed at a place other than an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to pedestrians and other vehicles.

(2) When a traffic signal has been erected or installed at a place other than an intersection, and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the traffic signal is emitting a steady yellow light, vehicles facing the light shall be warned that a red light will be immediately forthcoming and that vehicles may not proceed through such a red light. When the traffic signal is emitting a steady green light, vehicles may proceed subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at a place other than an intersection, approaching vehicles facing the light shall stop and yield the right-of-way to pedestrians or other vehicles.

(4) When a flashing yellow light has been erected or installed at a place other than an intersection, approaching vehicles facing the light may proceed with caution, yielding the right-of-way to pedestrians and other vehicles.

(5) When a traffic signal, stop sign, or other traffic control device authorized by subsection (a) requires a vehicle to stop at a place other than an intersection, the driver shall stop at an appropriately marked stop line, or if none, before entering a marked crosswalk, or if none, before proceeding past the traffic control device.

(d) No failure to stop as required by the provisions of this section shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether a party was guilty of negligence or contributory negligence.

(e) Defense. — It shall be a defense to a violation of sub-subdivision (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle that was entitled to have the right-of-way under applicable law was sitting at, traveling through, or approaching the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The motorcycle operator who received the citation waited a minimum of three minutes at the intersection or stop bar where the steady red light was being emitted in the direction of the operator before entering the intersection. (1937, c. 407, s. 120; 1941, c. 83; 1949, c. 583, s. 2; 1955, c. 384, s. 1; c. 913, s. 7; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1191; c. 1330, s. 22; 1975, c. 1; 1977, c. 464, s. 34; 1979, c. 298, s. 1; 1989, c. 285; 2004-141, ss. 1, 2; 2004-172, ss. 2, 5; 2006-264, s. 6; 2007-260, s. 1; 2007-360, ss. 2, 3.)

Local Modification. — Currituck: 1985, c. 288.

Editor's Note. — Session Laws 2004-172, s. 4, which was codified as G.S. 58-36-75(h) at the direction of the Revisor of Statutes, provides that the North Carolina Rate Bureau shall assign one insurance point under the Safe Driver Incentive Plan for persons who fail to yield to a pedestrian under G.S. 20-158(b)(2)b.

Session Laws 2004-172, s. 5, effective December 1, 2004, has been codified as sub-subdivision (b)(2)d. at the direction of the Revisor of Statutes.

Legal Periodicals. — For comment on the 1941 amendment, see 19 N.C.L. Rev. 455 (1941).

CASE NOTES

I. In General.
II. Rights and Duties Effected by Stop Signs.
III. Negligence and Proximate Cause.

I. IN GENERAL.

Applicability to U.S. Highways. — Highways which are built and maintained in part out of funds contributed by the federal government and which form links in an interstate system and are designated as U.S. highways are State highways under the supervision and control of the State Highway Commission (now Board of Transportation) and this section is applicable to these just as it is to other State highways. Yost v. Hall, 233 N.C. 463, 64 S.E.2d 554 (1951).

Unnamed dirt road and named paved road which intersected were public roads of equal dignity where neither was designated "main traveled or through highway" by the State Highway Commission (now Board of Transportation). Brady v. Nehi Beverage Co., 242 N.C. 32, 86 S.E.2d 901 (1955).

Designation of Streets by Municipal Authorities. — Where two streets of a municipality intersect, testimony identifying one as the through street and the other as the cross street on which there is a stop sign to the right of a driver thereon approaching the intersection connotes that the streets have been so designated and the sign erected by action of the municipal authorities. Smith v. Buie, 243 N.C. 209, 90 S.E.2d 514 (1955).

This section regulates the conduct of one entering the main highway from a private road. Penland v. Greene, 24 N.C. App. 240, 210 S.E.2d 505 (1974), aff'd, 289 N.C. 281, 221 S.E.2d 365 (1976).

This section applies to a "T" intersection, as with reference to the right-of-way as between two vehicles approaching and entering an intersection, the law of this State makes no distinction between a "T" intersection and one at which the two highways cross each other completely. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

The legislature took recognition of the fact that all highway intersections are not of equal importance because of the density of traffic on one highway as compared to the flow on an intersecting highway. Hence, a rule was prescribed for this situation by this section, requiring operators of motor vehicles on a servient highway to stop in accordance with signs commanding them to do so. This was supplemented in 1955 by the provisions of G.S. 20-158.1. McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

The automobile driver on a dominant highway approaching an intersecting servient highway is not under a duty to anticipate that the automobile driver on the servient highway will fail to stop as required by statute, and in the absence of anything which gives or should give notice to the contrary, he will be entitled to assume and to act upon the assumption, even to the last moment, that the automobile driver on the servient highway will obey the law and stop before entering the dominant highway. Lewis v. Brunston, 78 N.C. App. 68, 338 S.E.2d 595 (1986).

It is the duty of the driver of a motor vehicle on a servient highway to stop at such time and place as the physical conditions may require in order for him to observe traffic conditions on the highways and to determine when, in the exercise of due care, he may enter or cross the intersecting highway with reasonable safety. Derrick v. Ray, 61 N.C. App. 218, 300 S.E.2d 721 (1983).

The driver on the servient intersecting highway is not under a duty to anticipate that the automobile driver on the dominant highway, approaching the intersection of the two highways, will fail to observe the speed regulations and the rules of the road, and in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption that the automobile driver on the dominant highway will obey such regulations and the rules of the road. Lewis v. Brunston, 78 N.C. App. 68, 338 S.E.2d 595 (1986).

Where at the time they were struck defendants had fully complied with subsection (a) of this section, § 20-155(b) was applicable. Todd v. Shipman, 12 N.C. App. 650, 184 S.E.2d 403 (1971).

This section does not require a specific intent. State v. Wright, 52 N.C. App. 166, 278 S.E.2d 579 (1981).

Inadvertent Violation of Section. — Where there is an unintentional or inadvertent violation of this section, such violation, standing alone, does not constitute culpable negligence in the law of crimes as distinguished from actionable negligence in the law of torts. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v.

Sealy, 253 N.C. 802, 117 S.E.2d 793 (1961).

Proximate Cause in Prosecution for Involuntary Manslaughter. — Where a conviction of involuntary manslaughter is sought for the failure to observe a positive duty imposed by statute with reference to the driving of automobiles upon the State highways, the question of proximate cause must be shown beyond a mere chance or casualty. State v. Satterfield, 198 N.C. 682, 153 S.E. 155 (1930).

The manifest object of this section is to protect the public by requiring the driver of an automobile upon the public highways of the State to stop and ascertain the circumstances and conditions at highway intersections, particularly with reference to traffic, with a view of determining whether in the exercise of due care he may go upon the intersecting highway with reasonable safety to himself and others. Hence, where the defendant in a prosecution for manslaughter failed to stop, but had knowledge of the conditions and an unobstructed view of the highway for a long distance, and there was no evidence tending to show that he had violated any other statute or that he was negligent in any other respect, the evidence alone that he had violated the statute in the respect stated was insufficient to take the case to the jury, as there was no evidence that the violation of the statute was a proximate cause of the death or in causal relation thereto, and defendant's motion as of nonsuit, made in apt time, should have been granted. State v. Satterfield, 198 N.C. 682, 153 S.E. 155 (1930).

Evidence of Wanton Conduct Held Sufficient to Go To Jury. — In a negligence action, the evidence of the defendant's wanton conduct was sufficient to go to the jury, where defendant admitted: Awareness of her own substantial intoxication, indifference to her duty under G.S. 20-138.1 to avoid operating a motor vehicle while impaired, and obliviousness to the duty under this section to stop at the five stoplights between the cocktail lounge and the accident. It was for the jury to determine whether defendant's negligence evinced a wilful or reckless indifference to the rights of others, and then, whether her wilful or wanton conduct was the proximate cause of the accident. King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758, cert. denied, 315 N.C. 184, 337 S.E.2d 857 (1985); Field v. Sheriff of Wake County, 831 F.2d 530 (4th Cir. 1987).

Subsequent Prosecution Under § 20-141.4 Held Double Jeopardy. — Where defendant entered a plea of guilty to a charge of failing to yield the right-of-way in violation of this section, which failure resulted in an automobile accident, and a passenger thereafter died from injuries received in the accident, the trial of defendant on a charge of death by vehicle under G.S. 20-141.4 "in that he did unlawfully and willfully fail to yield the right-of-way ... in violation of General Statute 20-158" would place defendant in jeopardy for a second time on the charge of failure to yield the right-of-way, in violation of U.S. Const., Amend. V. State v. Griffin, 51 N.C. App. 564, 277 S.E.2d 77 (1981).

City's Red Light Camera Ordinance. — County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006), cert. denied, appeal dismissed, 361 N.C. 430, 648 S.E.2d 845 (2007).

Applied in Jones v. Bagwell, 207 N.C. 378, 177 S.E. 170 (1934); Powell v. Daniel, 236 N.C. 489, 73 S.E.2d 143 (1952); Edens v. Carolina Freight Carriers Corp., 247 N.C. 391, 100 S.E.2d 878 (1957); State v. Wells, 259 N.C. 173, 130 S.E.2d 299 (1963); Keith v. King, 263 N.C. 118, 139 S.E.2d 21 (1964); Douglas v. Booth, 6 N.C. App. 156, 169 S.E.2d 492 (1969); Gregor v. Willis, 8 N.C. App. 538, 174 S.E.2d 702 (1970); State v. Gainey, 292 N.C. 627, 234 S.E.2d 610 (1977); Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Cited in Camalier v. Jeffries, 340 N.C. 699, 460 S.E.2d 133; Leary v. Norfolk S. Bus Corp., 220 N.C. 745, 18 S.E.2d 426 (1942); Smith v. United States, 94 F. Supp. 681 (W.D.N.C. 1951); State v. Bournais, 240 N.C. 311, 82 S.E.2d 115 (1954); Currin v. Williams, 248 N.C. 32, 102 S.E.2d 455 (1958); Tucker v. Moorefield, 250 N.C. 340, 108 S.E.2d 637 (1959); Hunt v. Cranford, 253 N.C. 381, 117 S.E.2d 18 (1960); Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975); Penland v. Greene, 289 N.C. 281, 221 S.E.2d 365 (1976); Young v. Denning, 54 N.C. App. 361, 283 S.E.2d 164 (1981); Smith v. Stocks, 54 N.C. App. 393, 283 S.E.2d 819 (1981); State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221 (1983); State v. Field, 75 N.C. App. 647, 331 S.E.2d 221 (1985); Field v. Sheriff of Wake County, 831 F.2d 530 (4th Cir. 1987); State v. Hamrick, 110 N.C. App. 60, 428 S.E.2d 830 (1993); State v. Barnard, 362 N.C. 244, 658 S.E.2d 643, 2008 N.C. LEXIS 338 (2008).

II. RIGHTS AND DUTIES EFFECTED BY STOP SIGNS.

The purpose of highway stop signs is to enable the driver of a motor vehicle to have the opportunity to observe the traffic conditions on highways and to determine when in the exercise of due care he might enter upon an intersecting highway with reasonable assurance of safety to himself and others. Morrisette v. A.G. Boone Co., 235 N.C. 162, 69 S.E.2d 239 (1952); Edwards v. Vaughn, 238 N.C. 89, 76 S.E.2d 359 (1953); Badders v. Lassiter, 240 N.C. 413, 82 S.E.2d 357 (1954).

The purpose to be served by placing a stop sign some distance from intersection of a servient highway and a dominant highway is to give the motorist ample time to slow down and stop before entering the zone of danger. And when the driver of a motor vehicle stops at a stop sign on a servient highway and then proceeds into the intersection without keeping a lookout and ascertaining whether he can enter or cross the intersecting highway with reasonable safety, he ignores the intent and purpose of this section. Edwards v. Vaughn, 238 N.C. 89, 76 S.E.2d 359 (1953).

The erection of stop signs on an intersecting highway or street is a method of giving the public notice that traffic on one is favored over the other and that a motorist facing a stop sign must yield. Kelly v. Ashburn, 256 N.C. 338, 123 S.E.2d 775 (1962); Payne v. Lowe, 2 N.C. App. 369, 163 S.E.2d 74 (1968).

Section Creates No Duty on Part of Department of Transportation. — G.S. 20-158(a)(1) only authorizes the North Carolina Department of Transportation to erect or install stop signs, and while the Department of Transportation has authority to install a stop sign at an intersection, the statute does not mandate that it do so; the statute does not, therefore, establish that the Department of Transportation has a duty to erect or necessarily had responsibility for a stop sign and the Department of Transportation cannot be held liable for negligence based solely on the failure to erect a properly located sign at the intersection unless it breached a duty independent of G.S. 20-158(a). Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003), review dismissed, review denied, 358 N.C. 235, 595 S.E.2d 153 (2004), cert. denied, 358 N.C. 545, 599 S.E.2d 404 (2004).

Sign 600 Feet from Intersection Not "At the Entrance." — The stop signs referred to in this statute are signs erected "at the entrance" to the main traveled or through highway. A sign 600 feet away from an intersection cannot reasonably be said to be at the entrance thereto. Gilliland v. Ruke, 280 F.2d 544 (4th Cir. 1960).

Presumption That Signs Were Erected by Lawful Authority. — Stop signs at intersections are in such general use and their function is so well known that a motorist, in the absence of notice to the contrary, may presume that they were erected by lawful authority. The presumption is one of fact and, like other presumptions of fact, is rebuttable. Kelly v. Ashburn, 256 N.C. 338, 123 S.E.2d 775 (1962).

Duty to Stop Depends upon Presence of Stop Sign. — The language of this section indicates that the duty to stop depends upon the presence of a stop sign at the time the driver approaches the intersection. He is commanded to stop "in obedience" to the stop sign. If no such sign is in sight and the driver is not aware that there should be one, there is nothing to obey and hence no statutory duty to stop. Gilliland v. Ruke, 280 F.2d 544 (4th Cir. 1960).

Effect of Removal of Stop Sign. — Where driver on a highway which a stop sign had designated as the dominant highway knew that the stop sign had been so erected but did not know of its disappearance or removal, and driver on the highway which the stop sign had designated as the servient highway did not know that there had ever been a stop sign erected at the intersection, and he approached the intersection from the right of the other driver, removal of the stop sign would not take away the right of the driver of the vehicle on the highway designated by the sign as the dominant highway to treat the highway as such and to proceed into the intersection on the assumption that the other vehicle approaching from the right would yield the right-of-way to him. The responsibility of the driver of the vehicle on the highway designated by the sign as the servient highway, who did not know that such highway had ever been so designated, would be judged in the light of conditions confronting him, namely, an unmarked intersection at which the other vehicle was approaching from his left. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

This section does not require that a motorist stop where a stop sign is located. It requires that, in obedience to the notice provided by the stop sign, he bring his car to a full stop before entering the highway and yield the right-of-way to vehicles approaching the intersection on the highway. Clifton v. Turner, 257 N.C. 92, 125 S.E.2d 339 (1962); Howard v. Melvin, 262 N.C. 569, 138 S.E.2d 238 (1964).

Duty of Driver When Presented with Stop Sign. — A driver along a servient street is required, in compliance with this section, to bring his vehicle to a stop in obedience to a stop sign lawfully erected, and not to proceed into an intersection with the dominant highway until, in the exercise of due care, he can determine that he can do so with reasonable assurance of safety. Todd v. Shipman, 12 N.C. App. 650, 184 S.E.2d 403 (1971).

Stop signs erected by the State Highway Commission (now Board of Transportation) and local authorities on an intersecting highway or street pursuant to subsection (a) of this section are a method of giving the public notice that traffic on one is favored over traffic on the other, and a motorist facing a stop sign must yield.

Kelly v. Ashburn, 256 N.C. 338, 123 S.E.2d 775 (1962); Galloway v. Hartman, 271 N.C. 372, 156 S.E.2d 727 (1967).

A motorist traveling on a servient highway on which a stop sign has been erected at an intersection with a dominant highway may not lawfully enter such intersection until he has stopped and observed the traffic on the dominant highway and determined in the exercise of due care that he may enter such intersection with reasonable assurance of safety to himself and others. Primm v. King, 249 N.C. 228, 106 S.E.2d 223 (1958).

A driver of a motor vehicle about to enter a highway protected by stop signs must stop as directed, look in both directions and permit all vehicles to pass which are at such a distance and traveling at such a speed that it would be imprudent for him to proceed into the intersection. Matheny v. Central Motor Lines, 233 N.C. 673, 65 S.E.2d 361 (1951).

Driver to Exercise Due Care before Starting from Position on Subservient Highway. — It is the duty of a motorist before starting from his position on a subservient highway into a dominant highway to exercise due care to see that such movement can be made in safety. Morrisette v. A.G. Boone Co., 235 N.C. 162, 69 S.E.2d 239 (1952).

The driver on the subservient highway is not only required to stop, but, further, is required thereafter to exercise due care to see that he may enter the dominant highway in safety. Satterwhite v. Bocelato, 130 F. Supp. 825 (E.D.N.C. 1955).

This section not only requires the driver on the servient highway or street to stop, but such driver is further required, after stopping, to exercise due care to see that he may enter or cross the dominant highway or street in safety before entering thereon. Jordan v. Blackwelder, 250 N.C. 189, 108 S.E.2d 429 (1959); Wooten v. Russell, 255 N.C. 699, 122 S.E.2d 603 (1961); Howard v. Melvin, 262 N.C. 569, 138 S.E.2d 238 (1964).

This section not only requires the driver on a servient highway to stop, but such driver is further required to exercise due care to see that he may enter or cross the dominant highway or street in safety before entering thereon. This interpretation incorporates the requirements obtained in G.S. 20-154, that the motorist must see that such movement can be made in safety. Kanoy v. Hinshaw, 273 N.C. 418, 160 S.E.2d 296 (1968).

And to Delay Until Approaching Vehicles Have Passed. — When the driver of an automobile is required to stop at an intersection, he must yield the right-of-way to an automobile approaching on the intersecting highway, and unless the approaching automobile is far enough away to afford reasonable ground for the belief that he can cross in safety he must delay his progress until the other vehicle has passed. Matheny v. Central Motor Lines, 233 N.C. 673, 65 S.E.2d 361 (1951); Badders v. Lassiter, 240 N.C. 413, 82 S.E.2d 357 (1954).

This section requires the driver to remain in a private road until he ascertains, by proper lookout, that he can enter the main highway in safety to himself and to others on the highway. Warren v. Lewis, 273 N.C. 457, 160 S.E.2d 305 (1968).

The right of one starting from a stopped position to undertake to cross an intersection would depend largely upon the distance from the intersection of approaching vehicles and their speed, and unless under the circumstances he would reasonably apprehend no danger of collision from an approaching vehicle it would be his duty to delay his progress until the vehicle has passed. Badders v. Lassiter, 240 N.C. 413, 82 S.E.2d 357 (1954); Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965).

When Driver Should Proceed. — The driver who is required to stop should not proceed, with oncoming vehicles in view, until in the exercise of due care he has determined that he can proceed safely. U.S. Indus., Inc. v. Tharpe, 47 N.C. App. 754, 268 S.E.2d 824, cert. denied, 301 N.C. 90, 273 S.E.2d 311 (1980).

Duty to Determine Safety of Entry or Crossing Not Relieved by Location of Stop Signs at Points from Which Driver Cannot Get Unobstructed View. — Fact that stop signs, due to surrounding physical conditions, are located at points from which the driver of a motor vehicle cannot get an unobscured vision of the intersecting highway for a sufficient distance to ascertain whether it can be entered or crossed with reasonable safety does not relieve a driver on a servient highway from the duty to look and observe traffic conditions on the dominant highway, and to make such observation, before entering or crossing the same, as may be necessary to determine whether or not it would be reasonably safe to enter or cross such highway. Edwards v. Vaughn, 238 N.C. 89, 76 S.E.2d 359 (1953).

Right to Assume That Driver on Dominant Highway Will Obey Law. — The driver along the servient highway is not required to anticipate that a driver on the dominant highway will travel at excessive speed or fail to observe the rules of the road applicable to him. Farmer v. Reynolds, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

Right to Assume That Automobile on Servient Highway Will Stop as Required by Statute. — The operator of an automobile traveling upon a designated main-traveled or through highway and approaching an intersecting highway is under no duty to anticipate that the operator of an automobile approaching on such intersecting highway will fail to stop as required by the statute, and in the absence of anything which gives or should give notice to the contrary, he will be entitled to assume and to act upon the assumption, even to the last moment, that the operator of the automobile on the intersecting highway will act in obedience to the statute, and stop before entering such designated highway. Hawes v. Atlantic Ref. Co., 236 N.C. 643, 74 S.E.2d 17 (1953); Caughron v. Walker, 243 N.C. 153, 90 S.E.2d 305 (1955); Smith v. Buie, 243 N.C. 209, 90 S.E.2d 514 (1955); Jackson v. McCoury, 247 N.C. 502, 101 S.E.2d 377 (1958); King v. Powell, 252 N.C. 506, 114 S.E.2d 265 (1960); Wooten v. Russell, 255 N.C. 699, 122 S.E.2d 603 (1961); Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965); Moore v. Hales, 266 N.C. 482, 146 S.E.2d 385 (1966).

A motorist proceeding along a favored highway is entitled to assume that traffic on an intersecting secondary highway will yield him the right-of-way, and the effect of his right to rely on this assumption is not lost because warning signs have been misplaced or removed. Kelly v. Ashburn, 256 N.C. 338, 123 S.E.2d 775 (1962).

It is reasonable for the operator of an automobile, traveling upon a designated main-traveled or through highway and approaching an intersecting highway, to assume until the last moment that a motorist on the servient highway who has actually stopped in obedience to the stop sign will yield the right-of-way to him and will not enter the intersection until he has passed through it. Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965).

Nothing else appearing, the driver of a vehicle having the right-of-way at an intersection is entitled to assume and to act, until the last moment, on the assumption that the driver of another vehicle, approaching the intersection, will recognize his right-of-way and will stop or reduce his speed sufficiently to permit him to pass through the intersection in safety. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971); U.S. Indus., Inc. v. Tharpe, 47 N.C. App. 754, 268 S.E.2d 824, cert. denied, 301 N.C. 90, 273 S.E.2d 311 (1980).

Driver on a favored highway protected by a statutory stop sign does not have an absolute right-of-way in the sense that he is not bound to exercise care toward traffic approaching on an intersecting unfavored highway. It is his duty, notwithstanding his favored position, to observe ordinary care. Williamson v. Randall, 248 N.C. 20, 102 S.E.2d 381 (1958). See also, Scott v. Darden, 259 N.C. 167, 130 S.E.2d 42 (1963).

And Driver on Dominant Highway Must Exercise Due Care. — While the driver of a car along the dominant highway is entitled to assume that the operator of a car along the intersecting servient highway will stop before entering the intersection, the driver along the dominant highway is nevertheless required to exercise the care of an ordinarily prudent person under similar circumstances to keep a reasonably careful lookout, not to exceed a speed which is reasonable and prudent under the circumstances, and to take such care as a reasonably prudent man would exercise to avoid collision when danger of a collision is discovered or should have been discovered. Blalock v. Hart, 239 N.C. 475, 80 S.E.2d 373 (1954); Caughron v. Walker, 243 N.C. 153, 90 S.E.2d 305 (1955); Jackson v. McCoury, 247 N.C. 502, 101 S.E.2d 377 (1958).

The driver on a favored highway protected by a statutory stop sign does not have an absolute right-of-way in the sense that he is not bound to exercise care toward traffic approaching on an intersecting unfavored highway. It is his duty, notwithstanding his favored position, to observe ordinary care, that is, that degree of care which an ordinarily prudent person would exercise under similar circumstances. In the exercise of such duty it is incumbent upon him in approaching and traversing such an intersection (1) to drive at a speed no greater than is reasonable and prudent under the conditions then existing, (2) to keep his motor vehicle under control, (3) to keep a reasonably careful lookout, and (4) to take such action as an ordinarily prudent person would take in avoiding a collision with persons or vehicles upon the highway when, in the exercise of due care, the danger of such a collision is discovered or should have been discovered. Primm v. King, 249 N.C. 228, 106 S.E.2d 223 (1958); King v. Powell, 252 N.C. 506, 114 S.E.2d 265 (1960); Stockwell v. Brown, 254 N.C. 662, 119 S.E.2d 795 (1961); Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965); Murrell v. Jennings, 15 N.C. App. 658, 190 S.E.2d 686 (1972).

Even though a driver has the right-of-way at an intersection, it is incumbent upon him, in approaching and traversing the intersection, to drive at a speed no greater than is reasonable under the conditions then existing, to keep his vehicle under control, to keep a reasonably careful lookout and to take such action as a reasonably prudent person would take to avoid collision when the danger of one is discovered or should have been discovered. Dawson v. Jennette, 278 N.C. 438, 180 S.E.2d 121 (1971).

The driver of an automobile upon a through highway did not have the right to assume absolutely that a driver approaching the intersection along a servient highway would obey the stop sign before entering or crossing the through highway, but was required to keep a proper lookout and to keep his car at a reasonable speed under the circumstances in order to avoid injury to life or limb, and he forfeited his right to rely upon the assumption that the other driver would stop before entering or crossing the intersection when he approached and attempted to traverse it himself at an unlawful or excessive speed; moreover, even when his speed was lawful he remained under the duty of exercising due care to ascertain if the driver of the other car was going to violate the statutory requirement, in order to avoid the consequences of such negligence, it being necessary to construe the pertinent statutes in pari materia and this result being consonant with such construction. Groome v. Davis, 215 N.C. 510, 2 S.E.2d 771 (1939).

Liability of Driver Required to Stop Is Based on What He Should Have Seen. — The motorist who is required to stop and ascertain whether he can proceed safely is deemed to have seen what he would have been able to see had he looked, and his liability to one injured in a collision with his vehicle is determined as it would have been had he looked, observed the prevailing conditions and continued to drive as he did. U.S. Indus., Inc. v. Tharpe, 47 N.C. App. 754, 268 S.E.2d 824, cert. denied, 301 N.C. 90, 273 S.E.2d 311 (1980).

Right-of-Way Where Driver on Servient Street Is in Intersection. — Where the driver on the servient street is already in the intersection before the vehicle approaching on the dominant street is near enough to the intersection to constitute an immediate hazard, the driver on the servient street has the right-of-way. Farmer v. Reynolds, 4 N.C. App. 554, 167 S.E.2d 480 (1969); Todd v. Shipman, 12 N.C. App. 650, 184 S.E.2d 403 (1971).

A vehicle traveling along a through street does not have the right-of-way at an intersection if a vehicle from the cross street is already in the intersection before the vehicle traveling along the through street is near enough to the intersection to constitute an immediate hazard. Pearson v. Luther, 212 N.C. 412, 193 S.E. 739 (1937).

Fact that a motorist on a servient road reaches intersection a hairsbreadth ahead of one on the dominant highway does not give him the right to proceed. It is his duty to stop and yield the right-of-way unless the motorist on the dominant highway is a sufficient distance from the intersection to warrant the assumption that he can cross in safety before the other vehicle, operated at a reasonable speed, reaches the crossing. Farmer v. Reynolds, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

Instruction on Defendant's Duty Upheld. — A charge of the court with reference to this section, which stated, "The test is whether or not a reasonable and careful and prudent person would have stopped and yielded the right-of-way under the circumstances as they existed," clearly told the jury that defendant's duty was reasonable care under the circumstances. Wright v. Holt, 18 N.C. App. 661, 197 S.E.2d 811, cert. denied, 283 N.C. 759, 198 S.E.2d 729 (1973).

III. NEGLIGENCE AND PROXIMATE CAUSE.

Violation of this section is not negligent per se. State v. Williams, 3 N.C. App. 463, 165 S.E.2d 52 (1969).

But May Be Evidence of Negligence or Contributory Negligence to Be Considered. — Failure of a motorist traveling upon a servient highway to stop in obedience to a stop sign before entering an intersection with a dominant highway is not negligence per se and is insufficient, standing alone, to make out a prima facie case of negligence, but is only evidence of negligence to be considered along with other facts and circumstances adduced by the evidence, and an instruction that failure to stop in obedience to the sign is negligence must be held reversible error. Hill v. Lopez, 228 N.C. 433, 45 S.E.2d 539 (1947). See Nichols v. Goldston, 228 N.C. 514, 46 S.E.2d 320 (1948); Lee v. Robertson Chem. Corp., 229 N.C. 447, 50 S.E.2d 181 (1948); Bobbitt v. Haynes, 231 N.C. 373, 57 S.E.2d 361 (1950); Bailey v. Michael, 231 N.C. 404, 57 S.E.2d 372 (1950); Johnson v. Bell, 234 N.C. 522, 67 S.E.2d 658 (1951). See also, Satterwhite v. Bocelato, 130 F. Supp. 825 (E.D.N.C. 1955).

Failure to come to a complete stop before entering a through street intersection is not negligence per se, but only evidence of negligence to be considered with other facts in the case, such holding being a necessary corollary to the provision of this section that failure to stop before entering a through street intersection should not be considered contributory negligence per se, but only evidence to be considered with the other facts in the case upon the issue of contributory negligence. Sebastian v. Horton Motor Lines, 213 N.C. 770, 197 S.E. 539 (1938); Reeves v. Staley, 220 N.C. 573, 18 S.E.2d 239 (1942).

Failure of a driver along a servient highway to stop before entering an intersection with a dominant highway is not contributory negligence per se, but is to be considered with other facts in evidence in determining the issue. Hawes v. Atlantic Ref. Co., 236 N.C. 643, 74 S.E.2d 17 (1953); Primm v. King, 249 N.C. 228, 106 S.E.2d 223 (1958); State v. Sealy, 253 N.C. 802, 117 S.E.2d 793 (1961).

Failure to stop at a stop sign and yield the right-of-way is not negligence per se, but it is evidence of negligence that may be considered with other facts in the case in determining whether a party thereto was guilty of negligence or contributory negligence. Johnson v. Bass, 256 N.C. 716, 125 S.E.2d 19 (1962).

Directed verdict was properly granted as to an injured party's complaint for damages received in an automobile accident because the evidence, viewed most favorably to the injured party, showed his contributory negligence and violation of G.S. 20-158(b)(1) when he stopped at a stop sign before entering the intersection where the accident occurred, looked left and right, but did not look at an exit ramp from which a motorist who struck him entered the intersection, before proceeding into the intersection. Williams v. Davis, 157 N.C. App. 696, 580 S.E.2d 85, 2003 N.C. App. LEXIS 936 (2003).

While an injured party was not contributorily negligent per se under G.S. 20-158(d) when he entered an intersection after stopping at a stop sign, without looking at an exit ramp from which the vehicle that struck him entered the intersection, he was contributorily negligent, and his complaint was dismissed on a motion for directed verdict. Williams v. Davis, 157 N.C. App. 696, 580 S.E.2d 85, 2003 N.C. App. LEXIS 936 (2003).

And When It Is the Proximate Cause of Injury May Be Sufficient to Support Verdict. — While a failure to stop and yield the right-of-way to traffic on the dominant highway is not negligence per se, it is evidence of negligence, and, when the proximate cause of injury, is sufficient to support a verdict for plaintiff. Wooten v. Russell, 255 N.C. 699, 122 S.E.2d 603 (1961).

Failure to Exercise Ordinary Care as Actionable Negligence. — The duties of motorists, both those on dominant and those on servient highways, when approaching, entering or traversing intersections, require that each driver exercise ordinary care under the particular circumstances in which he finds himself; the failure to do so can constitute actionable negligence where injury results. Murrell v. Jennings, 15 N.C. App. 658, 190 S.E.2d 686 (1972).

Peremptory Instruction As to Negligence Was Proper. — As the evidence was undisputed as to the driver's violation of G.S. 20-158(b)(1), the trial court did not err in giving a peremptory instruction to the jury as to her negligence. Oakes v. Wooten, 173 N.C. App. 506, 620 S.E.2d 39, 2005 N.C. App. LEXIS 2100 (2005).

Burden of Proving Proximate Cause. — It is not enough for plaintiff to show that defendant was negligent in driving at an excessive speed, in failing to reduce his speed as he approached an entered intersection, or in failing to maintain a reasonable and proper lookout. The burden is also upon the plaintiff to prove that such negligence by defendant was one of the proximate causes of the collision and of his intestate's death. Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965).

Evidence Held Sufficient to Establish Negligence and Proximate Cause. — Where plaintiff's intestate brought automobile to a stop at a point where he had an unobstructed view of defendants' automobile approaching on the dominant highway, and resumed his progress into the intersection at a very slow rate of speed when defendants' automobile was so near to the intersection and moving at such a speed that in the exercise of reasonable prudence he should have seen that he could not cross in safety, his entry into the intersection in this manner and under these conditions was negligence and was one of the proximate causes of the collision and of his death, if not the sole proximate cause thereof. Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965).

Collision at an intersection where a stop sign has been removed or defaced may result from negligence of one party, or both, or neither. Kelly v. Ashburn, 256 N.C. 338, 123 S.E.2d 775 (1962).

Instruction as to negligence held error since it was counter to the provisions of this section. Stephens v. Johnson, 215 N.C. 133, 1 S.E.2d 367 (1939).

As to controlling effect of this section over a municipal ordinance making failure to stop unlawful, see Swinson v. Nance, 219 N.C. 772, 15 S.E.2d 284 (1941).

§ 20-158.1. Erection of "yield right-of-way" signs.

The Department of Transportation, with reference to State highways, and cities and towns with reference to highways and streets under their jurisdiction, are authorized to designate main-traveled or through highways and streets by erecting at the entrance thereto from intersecting highways or streets, signs notifying drivers of vehicles to yield the right-of-way to drivers of vehicles approaching the intersection on the main-traveled or through highway. Notwithstanding any other provisions of this Chapter, except G.S. 20-156, whenever any such yield right-of-way signs have been so erected, it shall be unlawful for the driver of any vehicle to enter or cross such main-traveled or through highway or street unless he shall first slow down and yield right-of-way to any vehicle in movement on the main-traveled or through highway or street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main-traveled or through highway or street. No failure to so yield the right-of-way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right-of-way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence. (1955, c. 295; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1330, s. 23; 1977, c. 464, s. 34.)

CASE NOTES

This section supplements § 20-158. McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958).

As to exemption of emergency ambulances from the requirements of this section, see Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965).

Where the driver on the servient street is already in the intersection before the vehicle approaching on the dominant street is near enough to the intersection to constitute an immediate hazard, the driver on the servient street has the right-of-way. Farmer v. Reynolds, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

Fact that a motorist on a servient road reaches intersection a hairbreadth ahead of one on the dominant highway does not give him the right to proceed. It is his duty to stop and yield the right-of-way unless the motorist on the dominant highway is a sufficient distance from the intersection to warrant the assumption that he can cross in safety before the other vehicle, operated at a reasonable speed, reaches the crossing. Farmer v. Reynolds, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

Driver on Servient Highway Not Required to Anticipate Violation of Law by Driver on Dominant Highway. — Driver along servient highway is not required to anticipate that a driver on the dominant highway will travel at excessive speed or fail to observe the rules of the road applicable to him. Farmer v. Reynolds, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

Cited in Johnson v. Bass, 256 N.C. 716, 125 S.E.2d 19 (1962); Hathcock v. Lowder, 16 N.C. App. 255, 192 S.E.2d 124 (1972).

§ 20-158.2. Control of vehicles on Turnpike System.

The North Carolina Turnpike Authority may control vehicles at appropriate places by erecting traffic control devices to collect tolls. (2002-133, s. 2.)

Cross References. — As to public toll roads and bridges, generally, see G.S. 136-89.180 et seq. As to the North Carolina Turnpike Authority, see G.S. 136-89.182.

§ 20-158.3. Emergency entry to controlled access roads.

Any person, association, or other legal entity having responsibility for a controlled access system on a road that is a public vehicular area shall provide a means of immediate access to all emergency service vehicles, which shall include law enforcement, fire, rescue, ambulance, and first responder vehicles. This section shall not apply to any entity where federal regulations and requirements on its activities preempt application of State regulations or requirements. (2007-455, s. 2.)

§ 20-159: Repealed by Session Laws 1973, c. 1330, s. 39.

§ 20-160. Driving through safety zone or on sidewalks prohibited.

(a) The driver of a vehicle shall not at any time drive through or over a safety zone.

(b) No person shall drive any motor vehicle upon a sidewalk or sidewalk area except upon a permanent or temporary driveway. (1937, c. 407, s. 122; 1973, c. 1330, s. 24.)

Cross References. — For definition of safety zone, see G.S. 20-4.01(39).

§ 20-160.1. Failure to yield causing serious bodily injury; penalties.

(a) Unless the conduct is covered under some other law providing greater punishment, a person who commits the offense of failure to yield while approaching or entering an intersection, turning at a stop or yield sign, entering a roadway, upon the approach of an emergency vehicle, or at highway construction or maintenance shall be punished under this section. When there is serious bodily injury but no death resulting from the violation, the violator shall be fined five hundred dollars ($500.00) and the violator's drivers license or commercial drivers license shall be suspended for 90 days.

(b) As used in this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (2004-172, s. 1.)

§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.

(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge. This subsection shall not apply to a solid waste vehicle stopped on a highway while engaged in collecting garbage as defined in G.S. 20-118(c)(5)g. or recyclable material as defined in G.S. 130A-290(a)(26).

(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway outside municipal corporate limits unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic.

(c) The operator of any truck, truck tractor, trailer or semitrailer which is disabled upon any portion of the highway shall display warning devices of a type and in a manner as required under the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. Such warning devices shall be displayed as long as the vehicle is disabled.

(d) The owner of any vehicle parked or left standing in violation of law shall be deemed to have appointed any investigating law-enforcement officer his agent:

(1) For the purpose of removing the vehicle to the shoulder of the highway or to some other suitable place; and

(2) For the purpose of arranging for the transportation and safe storage of any vehicle which is interfering with the regular flow of traffic or which otherwise constitutes a hazard, in which case the officer shall be deemed a legal possessor of the vehicle within the meaning of G.S. 44A-2(d).

(e) When any vehicle is parked or left standing upon the right-of-way of a public highway, including rest areas, for a period of 24 hours or more, the owner shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of arranging for the transportation and safe storage of such vehicle and such investigating law-enforcement officer shall be deemed a legal possessor of the motor vehicle within the meaning of that term as it appears in G.S. 44A-2(d).

(f) Any investigating law enforcement officer, with the concurrence of the Department of Transportation, may immediately remove or cause to be removed from the State highway system any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report. No state or local law enforcement officer, Department of Transportation employee, or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo, or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.

(g) The owner shall be liable for any costs incurred in the removal, storage, and subsequent disposition of a vehicle, cargo, or other personal property under the authority of this section. (1937, c. 407, s. 123; 1951, c. 1165, s. 1; 1971, c. 294, s. 1; 1973, c. 1330, s. 25; 1985, c. 454, s. 6; 2003-310, s. 1; 2007-360, ss. 4, 5; 2009-104, s. 1.)

Local Modification. — Brunswick: 2005-266, s. 1.

Effect of Amendments. — Session Laws 2009-104, s. 1, effective October 1, 2009, and applicable to offenses occurring on or after that date, added the last sentence in subsection (a).

CASE NOTES

I. In General.
II. Disabled Vehicles.
III. Warning Signals and Lights.
IV. Negligence and Proximate Cause.

I. IN GENERAL.

Meaning of "Park" on "Leave Standing". — The word "park" means the permitting of a vehicle to remain standing on a public highway or street, while not in use. State v. Carter, 205 N.C. 761, 172 S.E. 415 (1934).

To "park" means something more than a mere temporary or momentary stoppage on the road for a necessary purpose. Stallings v. Buchan Transp. Co., 210 N.C. 201, 185 S.E. 643 (1936); Morris v. Jenrette Transp. Co., 235 N.C. 568, 70 S.E.2d 845 (1952); Meece v. Dickson, 252 N.C. 300, 113 S.E.2d 578 (1960), overruled on other grounds, Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962); Saunders v. Warren, 264 N.C. 200, 141 S.E.2d 308 (1965). See also, Williams v. Jones, 53 N.C. App. 171, 280 S.E.2d 474 (1981); Adams v. Mills, 68 N.C. App. 256, 314 S.E.2d 589, rev'd on other grounds, 312 N.C. 181, 322 S.E.2d 164 (1984).

The words "park" and "leave standing," as used in this section, are modified by the words "whether attended or unattended," so that they are synonymous, and neither term includes a mere temporary stop for a necessary purpose when there is no intent to break the continuity of the travel as starting and stopping on a highway in accordance with the exigencies of the occasion is an incident to the right of travel. Peoples v. Fulk, 220 N.C. 635, 18 S.E.2d 147 (1942); Morris v. Jenrette Transp. Co., 235 N.C. 568, 70 S.E.2d 845 (1952); Royal v. McClure, 244 N.C. 186, 92 S.E.2d 762 (1956); Meece v. Dickson, 252 N.C. 300, 113 S.E.2d 578 (1960), overruled on other grounds, Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962); Wilson v. Miller, 20 N.C. App. 156, 201 S.E.2d 55 (1973).

"Park" and "leave standing," as used in subsection (a) of this section, are synonymous, and neither term includes a mere temporary or momentary stoppage on the highway for a necessary purpose when there is no intent to break the continuity of the travel. Faison v. T & S Trucking Co., 266 N.C. 383, 146 S.E.2d 450 (1966).

A mere temporary or momentary stoppage on the highway when there is no intent to break the continuity of the travel is not what is meant by the terms "parking" or "leave standing" as used in this section. Wilson v. Lee, 1 N.C. App. 119, 160 S.E.2d 107 (1968).

This section has no reference to a mere temporary stop for a necessary purpose when there is no intent to break the continuity of "travel." Royal v. McClure, 244 N.C. 186, 92 S.E.2d 762 (1956).

But a temporary stopping must be for a necessary purpose, and under such conditions that it is impossible to avoid leaving such vehicle in such position, that is, occupying the traveled portion of the highway. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

Whether stop, though temporary, was for a necessary purpose is a factor to be considered in determining a violation of this section. Williams v. Jones, 53 N.C. App. 171, 280 S.E.2d 474 (1981).

Deputy sheriff did not violate this section when he temporarily stopped his car on the right side of the highway in order to speak to an intoxicated pedestrian. Skinner v. Evans, 243 N.C. 760, 92 S.E.2d 209 (1956).

Stopping of a police car to determine whether driver of another car had a driver's license did not constitute a parking of the police car in violation of subsection (a) of this section. Kinsey v. Town of Kenly, 263 N.C. 376, 139 S.E.2d 686 (1965).

Truck Stopped to Avoid Wreck Held Not "Parked." — Where the driver of a truck with a trailer stopped on the highway at night on the right-hand side, with lights burning, because two automobiles in front of him were interlocked in a wreck, and at the time of the collision the truck and trailer had been standing still only a fraction of a minute, and the truck remained parked for about five minutes thereafter, it was held that at the time of the collision the truck was not "parked" on the highway within the meaning of this section. Stallings v. Buchan Transp. Co., 210 N.C. 201, 185 S.E. 643 (1936).

For case holding that defendant's tractor-trailer was not "parked" at place of collision, within the meaning of subsection (a) of this section, see Harris Express, Inc. v. Jones, 236 N.C. 542, 73 S.E.2d 301 (1952).

Stopping of Bus to Pick Up Passengers Not "Parking." — The stopping of a bus on the hard surface of a highway outside of a business or residential district to take on a passenger is not parking or leaving the vehicle standing within the meaning of the terms as used in this section. Peoples v. Fulk, 220 N.C. 635, 18 S.E.2d 147 (1942); Leary v. Norfolk S. Bus Corp., 220 N.C. 745, 18 S.E.2d 426 (1942); Morgan v. Carolina Coach Co., 225 N.C. 668, 36 S.E.2d 263 (1945). See also, Conley v. Pearce-Young-Angel Co., 224 N.C. 211, 29 S.E.2d 740 (1944); Banks v. Shepard, 230 N.C. 86, 52 S.E.2d 215 (1949).

Exemption for Police Roadblock. — Erection of some type of roadblock, whether stationary or running, may be the only practical method of stopping a determined and reckless lawbreaker. Under such circumstances, exemption for police vehicles from this section (in case of a stationary roadblock) or from former G.S. 20-151 (in case of a running roadblock) may be reasonably implied. Collins v. Christenberry, 6 N.C. App. 504, 170 S.E.2d 515 (1969).

This section requires that no part of a parked vehicle be left protruding into the traveled portion of the highway when there is ample room and it is practicable to park the entire vehicle off the traveled portion of the highway. Sharpe v. Hanline, 265 N.C. 502, 144 S.E.2d 574 (1965).

Fact that taillight of defendant's truck was still burning after collision did not excuse him from leaving it on the paved portion of a highway. Freshman v. Stallings, 128 F. Supp. 179 (E.D.N.C. 1955).

One stopping an automobile on the highway should use ordinary care to prevent a collision with other vehicles operating thereon. Saunders v. Warren, 267 N.C. 735, 149 S.E.2d 19 (1966).

Irrespective of Reason for Stopping. — The operator of a standing or parked vehicle which constitutes a source of danger to other users of the highway is generally bound to exercise ordinary or reasonable care to give adequate warning or notice to approaching traffic of the presence of the standing vehicle, and such duty exists irrespective of the reason for stopping the vehicle on the highway. The driver of the stopped vehicle must take such precautions as would reasonably be calculated to prevent injury, whether by the use of lights, flags, guards, or other practical means, and failing to give such warning may constitute negligence. Saunders v. Warren, 267 N.C. 735, 149 S.E.2d 19 (1966).

A motorist stopping on a pronounced curve should anticipate that a following motorist will have an obstructed view of the highway ahead. Saunders v. Warren, 267 N.C. 735, 149 S.E.2d 19 (1966).

Applied in Parkway Bus Co. v. Coble Dairy Prods. Co., 229 N.C. 352, 49 S.E.2d 623 (1948); Parrish v. Bryant, 237 N.C. 256, 74 S.E.2d 726 (1953); Chandler v. Forsyth Royal Crown Bottling Co., 257 N.C. 245, 125 S.E.2d 584 (1962); Carolina Coach Co. v. Cox, 337 F.2d 101 (4th Cir. 1964); Coleman v. Burris, 265 N.C. 404, 144 S.E.2d 241 (1965); Williams v. Hall, 1 N.C. App. 508, 162 S.E.2d 84 (1968); Staples v. Carter, 5 N.C. App. 264, 168 S.E.2d 240 (1969); Grimes v. Gibert, 6 N.C. App. 304, 170 S.E.2d 65 (1969); Northwestern Distribs., Inc. v. North Carolina Dep't of Transp., 41 N.C. App. 548, 255 S.E.2d 203 (1979); King v. Allred, 309 N.C. 113, 305 S.E.2d 554 (1983); State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983); Sizemore v. Raxter, 73 N.C. App. 531, 327 S.E.2d 258 (1985); Meadows v. Cigar Supply Co., 91 N.C. App. 404, 371 S.E.2d 765 (1988); Reed v. Abrahamson, 108 N.C. App. 301, 423 S.E.2d 491 (1992).

Cited in Riggs v. Gulf Oil Corp., 228 N.C.

774, 47 S.E.2d 254 (1948); Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949); Cronenberg v. United States, 123 F. Supp. 693 (E.D.N.C. 1954); Keener v. Beal, 246 N.C. 247, 98 S.E.2d 19 (1957); McDonald v. Patton, 240 F.2d 424 (4th Cir. 1957); Correll v. Gaskins, 263 N.C. 212, 139 S.E.2d 202 (1964); Lienthall v. Glass, 2 N.C. App. 65, 162 S.E.2d 596 (1968); Puryear v. Cooper, 2 N.C. App. 517, 163 S.E.2d 299 (1968); Choate Motor Co. v. Gray, 5 N.C. App. 643, 169 S.E.2d 77 (1969); Atkins v. Moye, 277 N.C. 179, 176 S.E.2d 789 (1970); Williamson v. Basinger, 30 N.C. App. 50, 226 S.E.2d 213 (1976); Digsby v. Gregory, 35 N.C. App. 59, 240 S.E.2d 491 (1978).

II. DISABLED VEHICLES.

Meaning of "Impossible". — The word "impossible" in subsection (a) of this section does not mean physical, absolute impossibility, but means not reasonably practical under the circumstances. Williams v. Jones, 53 N.C. App. 171, 280 S.E.2d 474 (1981).

The word "impossible" must be construed as meaning that the car must be disabled to the extent that it is not reasonably practical to move it so as to leave room for the free passage of other cars. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

"Impossible" is to be construed in a reasonable, practical sense. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

Emergency Parking on Shoulder. — Prohibiting the parking or leaving of a vehicle on "the paved or main traveled portion of any highway" does not prohibit the emergency parking of a vehicle on the shoulder of a highway, paved or otherwise, which is outside the main traveled part. Thomas v. Deloatch, 45 N.C. App. 322, 263 S.E.2d 615, cert. denied, 300 N.C. 379, 267 S.E.2d 685 (1980).

This section does not prohibit the emergency parking of a vehicle on the shoulder of a highway where no part of the vehicle extends into the main traveled portion of the highway. Adams v. Miller, 312 N.C. 181, 322 S.E.2d 164 (1984).

Claim of Exception to Be Tested by Facts. — Claim of protection by virtue exception of disabled vehicles from the prohibition in subsection (a) of this section where it is "impossible" to avoid leaving such vehicle on the paved or main traveled part of the highway must be tested by the facts of each case. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

Applicability of Exception Is a Jury Question. — Where there was evidence tending to show that defendant had parked his truck upon the hard surface of a highway in violation of this section, resulting in injury to plaintiff, but defendant claimed applicability of the exception as to disabled vehicles, under the statute and the facts disclosed by the record the matter should have been submitted to the jury under proper instructions, and the granting of defendant's motion as of nonsuit was error. Smithwick v. Colonial Pine Co., 200 N.C. 519, 157 S.E. 612 (1931).

As Is Question of Disablement. — Whether a puncture or blowout is such disablement of a motor vehicle as to justify the driver in stopping partially on the paved portion of the highway is ordinarily a question for the jury, unless the facts are admitted. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962); Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

As to burden of establishing exception for disabled vehicle, see Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

Evidence Held Insufficient to Establish Exception. — Where defendant's only evidence in excuse of parking on the paved portion of the highway was that he had a flat tire, such evidence was insufficient to bring defendant within the exception. Lambert v. Caronna, 206 N.C. 616, 175 S.E. 303 (1934).

Section Held Not Violated. — The parking of a disabled vehicle as far as possible on the right shoulder, leaving more than 15 feet of the main traveled portion of the highway open for the free passage of traffic, at a place where the drivers of other cars had a clear view of the parked automobile for a distance of more than 200 feet in both directions, was not a violation of this section. Rowe v. Murphy, 250 N.C. 627, 109 S.E.2d 474 (1959).

For case holding that statute was not violated where disabled truck was parked on shoulder of highway, see State v. McDonald, 211 N.C. 672, 191 S.E. 733 (1937).

III. WARNING SIGNALS AND LIGHTS.

"Truck" Does Not Include Three-Quarter Ton Truck. — The part of this section requiring the driver of a truck, trailer or semitrailer to display red flares or lanterns (now reflectors) when disabled upon the highway is not applicable to a three-quarter ton truck. Freshman v. Stallings, 128 F. Supp. 179 (E.D.N.C. 1955).

The word "truck," as used in this section, includes a mobile highway post-office vehicle. Cronenberg v. United States, 123 F. Supp. 693 (E.D.N.C. 1954).

Flare or Reflector Requirement Only Applicable to Trucks, Trailers and Semitrailers. — The requirement of this section with respect to placing red flares or lanterns (now reflectors) on the highway applies to trucks, trailers or semitrailers disabled on the highway, and not to automobiles. Rowe v. Murphy, 250 N.C. 627, 109 S.E.2d 474 (1959). See also, Exum v. Boyles, 272 N.C. 567, 158 S.E.2d 845 (1968).

But Obligation to Light Vehicles at Night Is Not Affected. — This section does not conflict with nor reduce the obligation imposed on the operator of a vehicle stopped or parked on the highway at night to light his vehicle as required by G.S. 20-129 and 20-134. Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962), overruling Meece v. Dickson, 252 N.C. 300, 113 S.E.2d 578 (1960), to the extent that it may be construed as conflicting.

And whether defendants violated this section would have no bearing upon their obligations in respect of lighting equipment and lights imposed by G.S. 20-129 and 20-134. Faison v. T & S Trucking Co., 266 N.C. 383, 146 S.E.2d 450 (1966).

Driver of a disabled truck is given a reasonable time to display warning signals, and the law will not hold him to be negligent in failing to do that which he has not had time to do. Morris v. Jenrette Transp. Co., 235 N.C. 568, 70 S.E.2d 845 (1952).

Right to Assume That Driver of Disabled Truck Will Display Warning Signals. — A motorist has the right to assume that the driver of any truck becoming disabled on the highway after sundown will display red flares on lanterns (now reflectors) are required by this section. Chaffin v. Brame, 233 N.C. 377, 64 S.E.2d 276 (1951); United States v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953); Towe v. Stokes, 117 F. Supp. 880 (M.D.N.C.), aff'd, 214 F.2d 563 (1954).

IV. NEGLIGENCE AND PROXIMATE CAUSE.

Violation of this section is negligence per se. Hughes v. Vestal, 264 N.C. 500, 142 S.E.2d 361 (1965); Wilson v. Miller, 20 N.C. App. 156, 201 S.E.2d 55 (1973); Furr v. Pinoca Volunteer Fire Dep't, 53 N.C. App. 458, 281 S.E.2d 174, cert. denied, 304 N.C. 587, 289 S.E.2d 377 (1981); King v. Allred, 60 N.C. App. 380, 299 S.E.2d 248 (1983); Clark v. Moore, 65 N.C. App. 609, 309 S.E.2d 579 (1983); Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

The requirement of setting out proper warning flares is absolute, and a violation of it is negligence per se. Barrier v. Thomas & Howard Co., 205 N.C. 425, 171 S.E. 626 (1933); Caulder v. Cresham, 224 N.C. 402, 30 S.E.2d 312 (1944).

To Be Actionable Negligence Must Be Proximate Cause of Injury. — Negligence in parking an automobile on a public highway in violation of this section, to be actionable, must be a proximate cause of the injury in suit. Burke v. Carolina Coach Co., 198 N.C. 8, 150 S.E. 636 (1929); Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

Failure to meet the requirements of this section relating to the display of warning signals when a truck, etc., is disabled on the highway convicts of negligence, which is actionable if such failure was one of the proximate causes of the collision. Taylor v. United States, 156 F. Supp. 763 (E.D.N.C. 1957).

Proximate Cause Is Jury Question. — Whether a violation of this section is the proximate cause of injury in a particular case is ordinarily a question for the jury. Hughes v. Vestal, 264 N.C. 500, 142 S.E.2d 361 (1965); Wilson v. Miller, 20 N.C. App. 156, 201 S.E.2d 55 (1973); Clark v. Moore, 65 N.C. App. 609, 309 S.E.2d 579 (1983).

Where violation of this section, which is negligence per se, is admitted or established by the evidence, it is ordinarily a question for the jury to determine whether such negligence is a proximate cause of injury which resulted in damages. Furr v. Pinoca Volunteer Fire Dep't, 53 N.C. App. 458, 281 S.E.2d 174, cert. denied, 304 N.C. 587, 289 S.E.2d 377 (1981).

Stopping to Receive or Discharge Passenger Does Not Necessarily Constitute Negligence. — The mere fact that a driver stops his vehicle on the traveled portion of a highway for the purpose of receiving or discharging a passenger, nothing else appearing, does not constitute negligence. Strickland v. Powell, 10 N.C. App. 225, 178 S.E.2d 136 (1970), aff'd, 279 N.C. 183, 181 S.E.2d 464 (1971).

Parking a truck on a paved highway at night, without flares or other warning, is negligence. Allen v. Dr. Pepper Bottling Co., 223 N.C. 118, 25 S.E.2d 388 (1943).

The parking of a car on the hard surface of a highway at night without a taillight in violation of statute is sufficient to sustain the jury's affirmative answer upon the issue of actionable negligence, and the question of contributory negligence in failing to see the parked car under the circumstances in time to have avoided the collision is also properly submitted to the jury. Lambert v. Caronna, 206 N.C. 616, 175 S.E. 303 (1934); Sharpe v. Hanline, 265 N.C. 502, 144 S.E.2d 574 (1965).

Leaving a disabled marine corps wrecker standing on the highway in the nighttime without lights and warning signals required by G.S. 20-134 and this section constituted negligence. United States v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953).

Failure to Move Disabled Truck to Shoulder of Highway. — Where one of truck's tires was flat and its motor was out of commission, but with the manpower present the truck could have been removed onto the shoulder, failure to do so constituted negligence. Freshman v. Stallings, 128 F. Supp. 179 (E.D.N.C. 1955).

Negligent Parking Need Not Be Anticipated. — Where defendant left his truck unattended, partly on a paved or improved portion of a State highway, between sunset and sunup, without displaying flares on lanterns (now reflectors) not less than 200 feet to the front and rear of the vehicle, he committed an act of negligence, and the driver of the car in which plaintiff was riding, traveling at about 30 to 35 miles per hour on the right side of the road under conditions which made it impossible for him to see more than a few feet ahead, although apparently guilty of negligence, was not under the duty of anticipating defendant's negligent parking, so that the concurrent negligence of the two made the resulting collision inevitable and an exception to the denial of a motion of nonsuit could not be sustained. Caulder v. Gresham, 224 N.C. 402, 30 S.E.2d 312 (1944).

Collision with Garbage Truck Stopped to Collect Garbage. — In a negligence action in which defendant employee parked garbage truck on the shoulder of the road facing oncoming traffic and van collided with the truck, evidence of alternative method for collecting customer's garbage prior to the accident, as well as testimony revealing defendant employee's rationale for stopping as he did, was relevant not only on the issue of whether defendant employer and defendant employee violated subsections (a) and (b) of this section, but also to the issue of defendant employee's alleged negligent conduct. Smith v. Pass, 95 N.C. App. 243, 382 S.E.2d 781 (1989).

In negligence action in which plaintiff's van collided with defendant's garbage truck, where there was conflicting evidence about the necessity of stopping the garbage truck on the shoulder and travelled portion of the road facing oncoming traffic and where there was conflicting evidence as to whether alternative means were available for defendant and his assistant to collect garbage at customer's residence, the court properly submitted this issue to the jury. Smith v. Pass, 95 N.C. App. 243, 382 S.E.2d 781 (1989).

Evidence Held to Make Out Prima Facie Case of Actionable Negligence. — Evidence that defendants left a wrecker standing on the highway in such manner that the wrecker and the cable attached blocked the entire highway, that the existing circumstances affected visibility of the cable, that no meaningful warning was given that the highway was completely obstructed, and that traffic, to avoid collision, would have had to come to a complete stop, made out a prima facie case of actionable negligence on the part of defendants. Montford v. Gilbhaar, 265 N.C. 389, 144 S.E.2d 31 (1965).

Negligence Held Proximate Cause of Collision. — Negligence of government's servants in failing to provide proper and statutory warning when a mobile highway post-office vehicle became disabled on the highway was one of the proximate causes of collision and resulting death and injuries. Cronenberg v. United States, 123 F. Supp. 693 (E.D.N.C. 1954).

For case holding evidence insufficient to show violation of section as proximate cause of injury, see Saunders v. Warren, 264 N.C. 200, 141 S.E.2d 308 (1965).

Evidence of Negligence Held Sufficient to Go to Jury. — Evidence that a disabled truck was left standing on the hard surface of a highway at night without warning flares or lanterns (now reflectors) as required by this section, and that a car, approaching from the rear, collided with the back of the truck, resulting in injuries to the driver and passengers in the car, was sufficient to be submitted to the jury on the issue of negligence in the actions instituted by the driver and occupants of the car against the driver and owner of the truck. Wilson v. Central Motor Lines, 230 N.C. 551, 54 S.E.2d 53 (1949).

Where defendant's truck, which was not disabled, was parked on the shoulder of a much-traveled, two-lane highway, and though the shoulder was wide enough with room to spare to accommodate the truck, part of it extended into the main-traveled portion of the highway far enough so that cars could not pass the truck without going into the other traffic lane, this was evidence enough of defendant's negligence and the issue was for the jury to determine, rather than the court. Wilkins v. Taylor, 76 N.C. App. 536, 333 S.E.2d 503 (1985).

Evidence Held to Disclose Contributory Negligence. — Conceding that defendant was negligent in parking his car on the hard surface in violation of this section, the evidence disclosed contributory negligence of plaintiff as a matter of law in attempting to pass the parked car without first ascertaining that he could do so in safety. McNair v. Kilmer & Co., 210 N.C. 65, 185 S.E. 481 (1936).

Guest's contributory negligence barred recovery from driver for negligence in parking vehicle in violation of this section. Basnight v. Wilson, 245 N.C. 548, 96 S.E.2d 699 (1957).

Where plaintiff may have raised a question of fact for the jury as to whether her stop at an accident site to offer assistance was a "necessary" one, it was uncontested that plaintiff had no disabling condition which caused her to stop the vehicle; thus, she violated G.S. 20- 161(a), and it was proper for the trial court to direct a verdict in favor of defendant. Hutton v. Logan, 152 N.C. App. 94, 566 S.E.2d 782, 2002 N.C. App. LEXIS 884 (2002).

Nonsuit on Ground of Contributory Negligence Held Not Warranted. — Evidence disclosing that plaintiff's automobile was parked on a bridge 40 feet wide, leaving a space of 30 feet for the passage of traffic, that the driver of defendants' bus was blinded by the lights of an approaching car and hit the rear of plaintiff's car, and that the bridge constituted part of a city street and the parking of cars on the bridge was customary, was held not to warrant nonsuit on the ground of contributory negligence, since even though the parking of the car on the bridge was negligence per se, whether such negligence under the circumstances was a proximate cause of the injury was a question for the jury. Boles v. Hegler, 232 N.C. 327, 59 S.E.2d 796 (1950).

Where evidence tended to show that defendant's mud-spattered truck was parked on a dark, foggy morning, with all four wheels on the pavement without lights, flares, or any other mode of signal, and had been so parked for some time, and that plaintiff was compelled to dim his lights when about 20 feet south of defendant's truck, in response to the dimmed lights of an oncoming car, the lights of this car partly blinding plaintiff, who collided with the rear of defendant's truck, a motion for nonsuit on the ground of contributory negligence was properly refused. Cummins v. Southern Fruit Co., 225 N.C. 625, 36 S.E.2d 11 (1945).

As to negligence of one defendant insulating negligence of another, see McLaney v. Anchor Motor Freight, Inc., 236 N.C. 714, 74 S.E.2d 36 (1953).

Negligence Instruction. — Where defendant offered no evidence that plaintiff's actions constituted negligence in violation of subsection (a) of this section or with regard to any other standard of care, the trial judge was not obligated to charge the jury on contributory negligence or to submit it as an issue to them. Adams v. Mills, 68 N.C. App. 256, 314 S.E.2d 589, rev'd on other grounds, 312 N.C. 181, 322 S.E.2d 164 (1984).

Burden of Proof. — The burden is on plaintiff to prove that defendant violated this section, while if defendant is to escape the consequences of this violation, defendant has the burden of bringing himself within the provision that "it is impossible to avoid stopping." Williams v. Jones, 53 N.C. App. 171, 280 S.E.2d 474 (1981).

Instructions on Burden of Proof. — In an action to recover damages suffered by plaintiff when his vehicle collided with that of defendant, trial court should have instructed the jury that plaintiff had the burden of proving that defendant violated subsection (a) of this section by parking or leaving his vehicle standing on the paved portion of the highway when he had the opportunity to park the vehicle on the shoulder of the highway, and that the burden was on defendant to prove that he was excused from such parking because it was not reasonably practical under the circumstances to avoid stopping on the paved portion of the highway; failure to so charge was error prejudicial to plaintiff. Williams v. Jones, 53 N.C. App. 171, 280 S.E.2d 474 (1981).

Sudden Emergency Instruction Required. — In an action to recover damages sustained in an automobile accident, the trial court erred in failing to charge on the doctrine of sudden emergency, as requested by plaintiff, where the evidence tended to show that plaintiff saw defendant's vehicle in his traffic lane when he was four car lengths away, that plaintiff did not pull onto the left lane because he was afraid that he would be hit by a tractor trailer behind him in that lane, that plaintiff probably could have pulled to the right but he would have been on a narrow grassy area and a guardrail was there, that the entire shoulder was only 10 feet wide, and that there was fog in the area at the time of the collision. Williams v. Jones, 53 N.C. App. 171, 280 S.E.2d 474 (1981).

§ 20-161.1. Regulation of night parking on highways.

No person parking or leaving standing a vehicle at night on a highway or on a side road entering into a highway shall permit the bright lights of said vehicle to continue burning when such lights face oncoming traffic. (1953, c. 1052.)

CASE NOTES

Hazard Against Which Section Directed. — This section is directed against the hazard of bright lights on standing vehicles facing oncoming traffic at night. Lienthall v. Glass, 2 N.C. App. 65, 162 S.E.2d 596 (1968).

Applicability of Section. — Section 20-168(b) makes this section, which prohibits bright lights on standing vehicles at night, inapplicable to street maintenance workers actually performing their duties. Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983), aff'd, 310 N.C. 148, 310 S.E.2d 347 (1984).

For case holding that guest's contributory negligence barred recovery from driver for negligence in parking vehicle in violation of this section, see Basnight v. Wilson, 245 N.C. 548, 96 S.E.2d 699 (1957).

Applied in Staples v. Carter, 5 N.C. App. 264, 168 S.E.2d 240 (1969); Tharpe v. Brewer, 7 N.C. App. 432, 172 S.E.2d 919 (1970).

§ 20-161.2: Repealed by Session Laws 1983, c. 420, s. 1.

Cross References. — As to post-towing procedures, see now G.S. 20-219.9 et seq.

§ 20-162. Parking in front of private driveway, fire hydrant, fire station, intersection of curb lines or fire lane.

(a) No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway in front of a private driveway or within 15 feet in either direction of a fire hydrant or the entrance to a fire station, nor within 25 feet from the intersection of curb lines or if none, then within 15 feet of the intersection of property lines at an intersection of highways; provided, that local authorities may by ordinance decrease the distance within which a vehicle may park in either direction of a fire hydrant.

(b) No person shall park a vehicle or permit it to stand, whether attended or unattended, upon any public vehicular area, street, highway or roadway in any area designated as a fire lane. This prohibition includes designated fire lanes in shopping center or mall parking lots and all other public vehicular areas. Provided, however, persons loading or unloading supplies or merchandise may park temporarily in a fire lane located in a shopping center or mall parking lot as long as the vehicle is not left unattended. The prima facie rule of evidence created by G.S. 20-162.1 is applicable to prosecutions for violation of this section. The owner of a vehicle parked in violation of this subsection shall be deemed to have appointed any State, county or municipal law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. No law-enforcement officer removing such a vehicle shall be held criminally or civilly liable in any way for any acts or omissions arising out of or caused by carrying out or enforcing any provisions of this subsection, unless the conduct of the officer amounts to wanton misconduct or intentional wrongdoing. (1937, c. 407, s. 124; 1939, c. 111; 1979, c. 552; 1981, c. 574, s. 1.)

Local Modification. — City of Wilson: 1985, c. 137; Town of Manteo: 2002-141, s. 7.

CASE NOTES

Applicability of Rule of Evidence in § 20-162.1. — The prima facie rule of evidence created by G.S. 20-162.1 is applicable to prosecutions for violation of this section. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

Violation of Section as Misdemeanor. — Violation of this section by parking within 25 feet from the intersection of curb lines at an intersection of highways within a municipality is a misdemeanor, notwithstanding that the prima facie rule of evidence created by G.S. 20-162.1 is invoked. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

Applied in Sizemore v. Raxter, 73 N.C. App. 531, 327 S.E.2d 258 (1985); Richardson v. Hiatt, 95 N.C. App. 196, 381 S.E.2d 866 (1989).

Cited in Basnight v. Wilson, 245 N.C. 548, 96 S.E.2d 699 (1957).

§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.

(a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of any municipal or Department of Transportation ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person found responsible for an infraction pursuant to this section shall be subject to a penalty of not more than five dollars ($5.00).

(b) The prima facie rule of evidence established by subsection (a) shall not apply to the registered owner of a leased or rented vehicle parked in violation of law when the owner can furnish sworn evidence that the vehicle was, at the time of the parking violation, leased or rented, to another person or company. In those instances, the owner of the vehicle shall furnish sworn evidence to the courts within 30 days after notification of the violation in accordance with this subsection.

If the notification is given to the owner of the vehicle within 90 days after the date of the violation, the owner shall include in the sworn evidence the name and address of the person or company that leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to include the name or address of the lessee or renter of the vehicle in the sworn evidence. (1953, c. 879, ss. 1, 11/2; c. 978; 1955, c. 566, s. 1; 1983, c. 753; 1985, c. 764, s. 32; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 736, s. 1; 1989, c. 243, s. 2; 2001-259, s. 1.)

Local Modification. — Mecklenburg: 1981, c. 239; city of Clinton: 1979, c. 326; city of Goldsboro: 1981, c. 314; city of Greenville: 1985 (Reg. Sess., 1986), c. 813; city of Jacksonville: 1985, c. 152; city of Sandford: 2006-28, s. 2; city of Winston-Salem: 1983, c. 160; town of Kernersville: 1987, c. 54; town of Pittsboro: 1987, c. 460, s. 27.

Editor's Note. — The act inserting this section exempted Madison and Sampson Counties. Session Laws 1953, c. 978, made the section applicable to Sampson County. Session Laws 1955, c. 566, s. 1, made the section applicable to Madison County.

Legal Periodicals. — For brief comment on this section, see 31 N.C.L. Rev. 410 (1953).

CASE NOTES

Origin of Section. — It seems apparent that as a result of the decision in State v. Scoggin, 236 N.C. 19, 72 S.E.2d 54 (1952), holding that the court, in the absence of a legislative rule of evidence to the contrary, would not consider mere ownership of a motor vehicle parked in violation of a city ordinance sufficient to sustain a criminal conviction, the General Assembly at its 1953 Session enacted the statute which is now this section. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

Effect of Section. — This section creates no criminal offense, but prescribes that when the prima facie rule of evidence therein set forth is relied upon by the State in a criminal prosecution, the punishment shall be a penalty of $1.00. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

The word "penalty" is used in this section in the broad sense of punishment and not in the sense of a penalty recoverable in a civil action. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

Applicability to Prosecutions Under § 20-162. — Prima facie rule of evidence created by this section is applicable to prosecutions for violation of G.S. 20-162. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

§§ 20-162.2, 20-162.3: Transferred to §§ 20-219.2, 20-219.3 by Session Laws 1973, c. 1330, s. 36.

§ 20-163. Unattended motor vehicles.

No person driving or in charge of a motor vehicle shall permit it to stand unattended on a public highway or public vehicular area without first stopping the engine, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway. (1937, c. 407, s. 125; 1973, c. 1330, s. 26.)

CASE NOTES

Violation of Section Is Negligence Per Se. — The violation of this section and other safety statutes is negligence per se, unless the statute expressly provides otherwise. McCall v. Dixie Cartage & Warehousing, Inc., 272 N.C. 190, 158 S.E.2d 72 (1967).

When a vehicle is parked, this section requires a setting of the brakes, and a violation of this statute is negligence. Bundy v. Belue, 253 N.C. 31, 116 S.E.2d 200 (1960).

But Violation Must Be Proximate Cause of Injury to Be Actionable. — Violation of this section is negligence per se, but it must be a proximate cause of the injury to be actionable. Arnett v. Yeago, 247 N.C. 356, 100 S.E.2d 855 (1957); Watts v. Watts, 252 N.C. 352, 113 S.E.2d 720 (1960).

Violation Inferred from Runaway Automobile. — The fact that an automobile ran down the street for a considerable distance immediately after it was parked permitted the inference that plaintiff's intestate did not turn the vehicle's front wheels to the curb of the street as required by G.S. 20-124 and this section. Watts v. Watts, 252 N.C. 352, 113 S.E.2d 720 (1960).

Exercise of Care Other Than on Public Highways. — For case citing this statute for the purpose of indicating that due care in the operation of motor vehicles must be exercised in places other than upon public highways, see Wiggins v. Paramount Motor Sales, Inc., 89 N.C. App. 119, 365 S.E.2d 192 (1988).

Evidence that defendant left loaner car, which he knew to be without an emergency brake, parked with the engine running at a relatively high speed near the place where he was conversing with plaintiff was sufficient to take the case to the jury on the issue of whether defendant was negligent in the operation of his loaner car. Wiggins v. Paramount Motor Sales, Inc., 119 N.C. App. 89, 365 S.E.2d 192 (1988).

§ 20-164: Repealed by Session Laws 1973, c. 1330, s. 39.

§ 20-165: Repealed by Session Laws 1995, c. 379, s. 6.

§ 20-165.1. One-way traffic.

In all cases where the Department of Transportation has heretofore, or may hereafter lawfully designate any highway or other separate roadway, under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof, it shall be unlawful for any person to willfully drive or operate any vehicle on said highway or roadway except in the direction so indicated by said signs. (1957, c. 1177; 1973, c. 507, s. 5; c. 1330, s. 28; 1977, c. 464, s. 34.)

CASE NOTES

Regulatory Power of State. — This section and G.S. 20-156(a) illustrate the power of the State to regulate the time and manner of entering a public highway. Moses v. State Hwy. Comm'n, 261 N.C. 316, 134 S.E.2d 664, cert. denied, 379 U.S. 930, 85 S. Ct. 327, 13 L. Ed. 2d 342 (1964).

Willful violation of this section would constitute culpable negligence if it was the proximate cause of death. State v. Atkins, 58 N.C. App. 146, 292 S.E.2d 744, cert. denied and appeal dismissed, 306 N.C. 744, 295 S.E.2d 480 (1982).

Cited in State Hwy. Comm'n v. Raleigh

Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965).

§ 20-166. Duty to stop in event of a crash; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

(a) The driver of any vehicle who knows or reasonably should know:

(1) That the vehicle which he or she is operating is involved in a crash; and

(2) That the crash has resulted in serious bodily injury, as defined in G.S. 14-32.4, or death to any person;

shall immediately stop his or her vehicle at the scene of the crash. The driver shall remain with the vehicle at the scene of the crash until a law-enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as a Class F felony.

(a1) The driver of any vehicle who knows or reasonably should know:

(1) That the vehicle which he or she is operating is involved in a crash; and

(2) That the crash has resulted in injury;

shall immediately stop his or her vehicle at the scene of the crash. The driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the crash scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as a Class H felony.

(b) In addition to complying with the requirements of subsections (a) and (a1) of this section, the driver as set forth in subsections (a) and (a1) shall give his or her name, address, driver's license number and the license plate number of the vehicle to the person struck or the driver or occupants of any vehicle collided with, provided that the person or persons are physically and mentally capable of receiving such information, and shall render to any person injured in such crash reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person. A violation of this subsection is a Class 1 misdemeanor.

(c) The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results:

(1) Only in damage to property; or

(2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop the vehicle at the scene of the crash. If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.

(c1) In addition to complying with the requirement of subsection (c) of this section, the driver as set forth in subsection (c) shall give his or her name, address, driver's license number and the license plate number of his vehicle to the driver or occupants of any other vehicle involved in the crash or to any person whose property is damaged in the crash. If the damaged property is a parked and unattended vehicle and the name and location of the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided the driver thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing the information in a conspicuous place upon or in the damaged vehicle. If the damaged property is a guardrail, utility pole, or other fixed object owned by the Department of Transportation, a public utility, or other public service corporation to which report cannot readily be made at the scene, it shall be sufficient if the responsible driver shall furnish the information required to the nearest peace officer or make written report thereof containing the information by U.S. certified mail, return receipt requested, to the North Carolina Division of Motor Vehicles within five days following the collision. A violation of this subsection is a Class 1 misdemeanor.

(c2) Notwithstanding subsections (a), (a1), and (c) of this section, if a crash occurs on a main lane, ramp, shoulder, median, or adjacent area of a highway, each vehicle shall be moved as soon as possible out of the travel lane and onto the shoulder or to a designated accident investigation site to complete the requirements of this section and minimize interference with traffic if all of the following apply:

(1) The crash has not resulted in injury or death to any person or the drivers did not know or have reason to know of any injury or death.

(2) Each vehicle can be normally and safely driven. For purposes of this subsection, a vehicle can be normally and safely driven if it does not require towing and can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway.

(d) Any person who renders first aid or emergency assistance at the scene of a motor vehicle crash on any street or highway to any person injured as a result of the accident, shall not be liable in civil damages for any acts or omissions relating to the services rendered, unless the acts or omissions amount to wanton conduct or intentional wrongdoing.

(e) The Division of Motor Vehicles shall revoke the drivers license of a person convicted of violating subsection (a) or (a1) of this section for a period of one year, unless the court makes a finding that a longer period of revocation is appropriate under the circumstances of the case. If the court makes this finding, the Division of Motor Vehicles shall revoke that person's drivers license for two years. Upon a first conviction only for a violation of subsection (a1) of this section, a trial judge may allow limited driving privileges in the manner set forth in G.S. 20-179.3(b)(2) during any period of time during which the drivers license is revoked. (1937, c. 407, s. 128; 1939, c. 10, ss. 1, 11/2; 1943, c. 439; 1951, cc. 309, 794, 823; 1953, cc. 394, 793; c. 1340, s. 1; 1955, c. 913, s. 8; 1965, c. 176; 1967, c. 445; 1971, c. 958, s. 1; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, s. 34; 1979, c. 667, s. 32; 1983, c. 912, s. 1; 1985, c. 324, ss. 1-4; 1993, c. 539, ss. 373-375, 1260; 1994, Ex. Sess., c. 24, s. 14(c); 2003-310, s. 2; 2003-394, s. 1; 2005-460, s. 1; 2008-128, s. 1.)

Cross References. — As to immunity from liability of any person rendering first aid or emergency health care treatment to an unconscious, ill or injured person in certain circumstances, see G.S. 90-21.14.

Editor's Note. — Subsections (a) and (c), as rewritten by Session Laws 2005-460, s. 1, effective December 1, 2005, are applicable to offenses committed on or after that date.

Effect of Amendments. — Session Laws 2008-128, s. 1, effective December 1, 2008, and applicable to offenses committed on or after that date, substituted "crash" for "accident or collision" or "accident," and made related changes throughout the section; in subdivision (a)(2), substituted "serious bodily injury, as defined in G.S. 14-32.4" for "injury"; in the last paragraph of subsection (a), substituted "Class F" for "Class H"; added subsection (a1), and added references to subsection (a1) throughout the section; and made stylistic changes.

Legal Periodicals. — As to the effect of the 1939 amendment, see 17 N.C.L. Rev. 349 (1939).

For brief comment on the 1953 amendments, see 31 N.C.L. Rev. 419 (1953).

For note on North Carolina's "Good Samaritan" statute, see 44 N.C.L. Rev. 508 (1966).

For note on duty of tort-feasor and of innocent participant to render aid to accident victim, see 6 Wake Forest Intra. L. Rev. 537 (1970).

For survey of 1980 criminal law, see 59 N.C.L. Rev. 1123 (1981).

For survey of 1981 criminal law, see 60 N.C.L. Rev. 1289 (1982).

CASE NOTES

I. In General.
II. Warrants and Indictments.

I. IN GENERAL.

Editor's Note. — *Many of the cases cited below were decided under this section as it read prior to the 1983 amendment.*

Purpose of Section. — The general purpose of this section is to facilitate investigation of automobile accidents and to assure immediate aid to anyone injured by such collision. State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245, aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 487 (1981).

The purpose of the requirement that a motorist stop and identify himself is to facilitate investigation. State v. Smith, 264 N.C. 575, 142 S.E.2d 149 (1965).

A plain reading of this section indicates it exists for safety purposes and imposes a duty of care upon a person whose vehicle collides with another person. Powell v. Doe, 123 N.C. App. 392, 473 S.E.2d 407 (1996).

An offense under this section is not restricted to public highways. — State v. Smith, 264 N.C. 575, 142 S.E.2d 149 (1965).

Elements of Offense. — In prosecutions under subsection (a) of this section as it read prior to the 1983 amendment, the State had to prove that the defendant knew (1) that he had been involved in an accident or collision, and (2) that a person was killed or physically injured in the collision. The knowledge required could be actual or implied. State v. Fearing, 304 N.C. 471, 284 S.E.2d 487 (1981).

To support a verdict of guilty under subsection (a) of this section as it read prior to the 1983 amendment, the State had to prove that defendant was driving the automobile involved in the accident at the time it occurred; that the vehicle defendant was driving came into contact with another person resulting in injury or death; and that defendant, knowing he had struck the victim, failed to stop immediately at the scene. State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245 (1980), aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 487 (1981).

In order to convict defendant on a count which charged a violation of subsection (a) of this section as it read prior to the 1983 amendment, it was necessary for the State to prove that on the occasion in question, defendant was the operator of a named automobile which the State contended drove down a given street; that this vehicle was involved in an accident or collision with the alleged victim; and that knowing he had struck the victim, defendant failed to stop his vehicle immediately at the scene. State v. Overman, 257 N.C. 464, 125 S.E.2d 920 (1962).

As to elements of offense under subsection (c) as it read prior to the 1983 amendment, see State v. Overman, 257 N.C. 464, 125 S.E.2d 920 (1962).

The essential elements of the offense of hit and run with personal injury are: (1) That the defendant was involved in an accident; (2) that someone was physically injured in this accident; (3) that at the time of the accident the defendant was driving the vehicle; (4) that the defendant knew that he had struck a pedestrian and that the pedestrian suffered physical injury; (5) that the defendant did not stop his vehicle immediately at the scene of the accident; and (6) that the defendant's failure to stop was wilful, that is, intentional and without justification or excuse. State v. Acklin, 71 N.C. App. 261, 321 S.E.2d 532 (1984).

Defendant was properly convicted of giving false information for a motor vehicle crash report in violation of G.S. 20-279.31(b) when defendant falsely stated that defendant drove a vehicle involved in a crash, because, inter alia, while G.S. 20-166.1(h) did not list "driver's identity" with the information that "shall be included," the remaining portions of the statute preceding and following that section imposed an explicit duty on drivers to provide the drivers' name, address, and other information in the event of a reportable accident, G.S. 20-166(b), (c1), G.S. 20-166.1(a) — (c), so it could be inferred that the term "persons and vehicles involved" necessarily included the identity of the driver. State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

Negligence Per Se. — Violation of this type of statute is negligence per se if new injuries, or an aggravation of original injuries, occur after the hit and run driver leaves the scene without rendering aid. Powell v. Doe, 123 N.C. App. 392, 473 S.E.2d 407 (1996).

Any negligence in failing to stop after an accident cannot be the proximate cause of the occurrence of the accident itself, or of any immediate injury or death resulting therefrom; thus, use of this section as the standard for negligence per se will only be appropriate when the evidence shows that the hit and run driver's failure to stop and render aid either exacerbated the injury, resulted in unnecessary pain and suffering, or resulted in an avoidable death. Powell v. Doe, 123 N.C. App. 392, 473 S.E.2d 407 (1996).

Effect of Proviso Regarding Parked or Unattended Vehicles. — Proviso in subsection (b) as it read prior to the 1983 amendment merely withdrew the case of a parked or unattended vehicle whose owner's identity was not readily ascertainable from the general language of the statute. It did not describe a separate offense, and therefore it did not need to be negatived in the warrant. State v. Norris, 26 N.C. App. 259, 215 S.E.2d 875, appeal dismissed, 288 N.C. 249, 217 S.E.2d 673 (1975), cert. denied, 423 U.S. 1073, 96 S. Ct. 856, 47 L. Ed. 2d 83 (1976).

Lesser Included Offense. — The misdemeanor described in subsection (b) as it read prior to the 1983 amendment was not a lesser included offense of the crime described in subsection (c) as it read prior to the 1983 amendment. State v. Chavis, 9 N.C. App. 430, 176 S.E.2d 388 (1970).

Meaning of "Person Struck" and "Driver or Occupants". — Under this section, "the person struck" means a pedestrian, and "the driver or occupants of any vehicle collided with" means the driver or passengers in a vehicle. State v. Gatewood, 46 N.C. App. 28, 264 S.E.2d 375, cert. denied, 300 N.C. 559, 270 S.E.2d 112 (1980).

No Violation in Failing to Give Information to Driver Where Only Pedestrian Injured. — Where defendant's car struck and killed a pedestrian and then sideswiped an approaching vehicle, but the collision did not result in injury or death to the driver or any passengers in the sideswiped vehicle collided with, defendant did not violate this section in failing to give the required information to the driver. State v. Gatewood, 46 N.C. App. 28, 264 S.E.2d 375, cert. denied, 300 N.C. 559, 270 S.E.2d 112 (1980).

Personal injury or death is a necessary element of the offense envisioned by this section. State v. Crutchfield, 5 N.C. App. 586, 169 S.E.2d 43 (1969).

As Is Knowledge That Accident Resulted in Injury or Death. — Knowledge of the driver that his vehicle had been involved in an accident resulting in injury to a person is an essential element of the offense of "hit-and-run driving." State v. Ray, 229 N.C. 40, 47 S.E.2d 494 (1948); State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245, cert. denied, 301 N.C. 99, 273 S.E.2d 303, 301 N.C. 403, 273 S.E.2d 448 (1980), aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 487 (1981).

Knowledge by a motorist that he had struck a pedestrian is an essential element of the offense of failing to stop and give such pedestrian aid. State v. Glover, 270 N.C. 319, 154 S.E.2d 305 (1967).

In order to lay the basis for punishment under former G.S. 20-182 for willful violation of this section, the State must show that defendant willfully violated subsection (a) of this section by failing to stop at the scene of an accident, knowing that there was an accident and knowing that a person had been injured or killed in the accident; therefore, in a prosecution of defendant for being an accessory after the fact to hit-and-run driving, trial court's instruction was erroneous where it gave the impression that, if the accident involved injury or death to a person, knowledge that an accident had occurred was sufficient to provide the element of willful failure to stop, and that a showing of the driver's knowledge of injury or death to a person was not required. State v. Fearing, 50 N.C. App. 475, 279 S.E.2d 356, aff'd in part and rev'd in part on other grounds, 304 N.C. 499, 284 S.E.2d 479 (1981). See also, State v. Fearing, 304 N.C. 471, 284 S.E.2d 487 (1981).

Duty of Driver Involved in Accident Resulting in Personal Injury or Death. — This section requires the driver of a vehicle, involved in an accident or collision resulting in injury or death to any person, to stop, render reasonable assistance and give certain specified information to the occupant or driver of the vehicle collided with. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

This section requires the driver of a vehicle involved in an accident to stop at the scene, and in the event the accident involves the injury of any person, it requires him to give his name, address, operator's license and the registration number of his vehicle, and to render reasonable assistance to the injured person. State v. Brown, 226 N.C. 681, 40 S.E.2d 34 (1946).

A driver violates this section if he does not immediately stop at the scene. State v. Norris, 26 N.C. App. 259, 215 S.E.2d 875, appeal dismissed, 288 N.C. 249, 217 S.E.2d 673 (1975), cert. denied, 423 U.S. 1073, 96 S. Ct. 856, 47 L. Ed. 2d 83 (1976); State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245, cert. denied, 301 N.C. 99, 273 S.E.2d 303, 301 N.C. 403, 273 S.E.2d 448 (1980), aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 487 (1981); State v. Lucas, 58 N.C. App. 141, 292 S.E.2d 747, cert. denied, 306 N.C. 390, 293 S.E.2d 593 (1982).

And failure to stop is the gist of the offense. State v. Smith, 264 N.C. 575, 142 S.E.2d 149 (1965).

Good Faith in Obtaining Aid for Injured Party Immaterial to Charge of Failure to Stop. — Where defendant admitted that he knew he had hit a man and that he did not stop or return to the scene, his own testimony disclosed a violation of this section, and his good faith in stopping 200 yards away from the accident and obtaining aid for the injured man before proceeding on his way to his home was immaterial on the issue of guilt or innocence; hence, the exclusion of testimony to this effect was without error. State v. Brown, 226 N.C. 681, 40 S.E.2d 34 (1946).

As Is Absence of Fault. — Absence of fault on the part of the driver is not a defense to the charge of failure to stop. State v. Smith, 264 N.C. 575, 142 S.E.2d 149 (1965); State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245, cert. denied, 301 N.C. 99, 273 S.E.2d 303, 301 N.C. 403, 273 S.E.2d 448 (1980), aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 487 (1981).

Failure to Stop or Flight from Scene as Evidence of Conscious Wrong. — A defendant's failure to stop, as required by this section, or his immediate flight from the scene of the injury, affords sufficient evidence of conscious wrong or dereliction on his part to warrant the jury in so concluding. Edwards v. Cross, 233 N.C. 354, 64 S.E.2d 6 (1951).

This section does not require a statement by the driver as to how he was driving or what caused the collision. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Giving of Name, etc., Not Required Where Other Parties Too Injured to Receive Report. — Defendant could not be convicted of the charge that he failed to give his name, address, etc., where the evidence showed that all others involved in the accident were either killed or so seriously injured that there was no one to whom defendant could give a report. State v. Wall, 243 N.C. 238, 90 S.E.2d 383 (1955).

Where evidence by the State was to the effect that the injured party was unconscious after the accident, no useful purpose could have been served by undertaking to give the unconscious man the information required by this section. The law does not require a party to do a vain and useless thing. State v. Coggin, 263 N.C. 457, 139 S.E.2d 701 (1965).

A defendant may not be convicted of failing to give assistance to a person instantly killed in collision. State v. Wall, 243 N.C. 238, 90 S.E.2d 383 (1955).

Whether Injury Was Sustained Is Jury Question. — Whether a person received personal injuries in an accident within the meaning of this section is a matter for determination by the jury. State v. Chavis, 9 N.C. App. 430, 176 S.E.2d 388 (1970).

Burden of Proof on State. — The burden is on the State to satisfy beyond a reasonable doubt that defendant violated every element of a crime charged under this section. State v.

Chavis, 9 N.C. App. 430, 176 S.E.2d 388 (1970).

The State has the burden of presenting sufficient evidence on each and every element of the offense of hit and run with personal injury to warrant submitting its case to the jury. State v. Acklin, 71 N.C. App. 261, 321 S.E.2d 532 (1984).

Evidence Held Admissible. — No plain error existed in a trial court admitting evidence of defendant's empty prescription pill bottle, testimony by an officer identifying the pills from the label, and testimony by a pharmacist about the interaction between the pills and alcohol, as the evidence was relevant to show that defendant, who had been drinking, was driving while impaired at the time of an auto accident. State v. Edwards, 170 N.C. App. 381, 612 S.E.2d 394, 2005 N.C. App. LEXIS 992 (2005).

Defendant was entitled to have judge instruct the jury that the burden was on the State to establish beyond a reasonable doubt that defendant knowingly or intentionally failed to render reasonable assistance to his injured passenger, including carrying him to a physician or surgeon for medical or surgical treatment if it was apparent that such treatment was necessary. State v. Coggin, 263 N.C. 457, 139 S.E.2d 701 (1965).

Instruction Upheld. — In a prosecution for "hit-and-run driving," an instruction that defendant was charged with violation of one of the motor vehicle statutes designed for the protection of life and property could not be held error, as the statement was not related to any fact in issue or any evidence introduced in the case and contained no inference as to the guilt or innocence of defendant, where it further appeared that the court correctly charged upon the presumption of innocence and the burden of proof. State v. King, 219 N.C. 667, 14 S.E.2d 803 (1941).

For case holding that proof of failure to stop automobile at scene of accident was wholly lacking, see State v. Wall, 243 N.C. 238, 90 S.E.2d 383 (1955).

Evidence Held Sufficient for Jury. — Evidence which tended to show that the car of the prosecuting witness was struck by a car which was traveling at the time of the accident with its left wheels over the centerline of the highway, that an occupant in the car of the prosecuting witness was injured, and that the car which collided with her car failed to stop after the collision, in violation of this section, along with circumstantial evidence, including marks on the highway leading uninterruptedly from the point of collision to a car parked at defendant's place of business which defendant admitted to be his, the condition of defendant's car, a hub cap and other automobile parts found at the scene of the collision which were missing from defendant's car, and other circumstances tending to show efforts on the part of defendant to conceal the identity of his car as the one involved in the collision, together with testimony by defendant that no one else had driven his car on the evening in question, was held sufficient to have been submitted to the jury on the question of defendant's guilt, and his motions for judgment as of nonsuit were held properly refused. State v. King, 219 N.C. 667, 14 S.E.2d 803 (1941).

For case holding evidence sufficient to take case to jury as to whether defendant failed to render reasonable assistance to injured persons as required by this section, see State v. Wall, 243 N.C. 238, 90 S.E.2d 383 (1955).

For case holding evidence sufficient to support charge of failing to stop an automobile after an accident resulting in the death of a person, see State v. Massey, 271 N.C. 555, 157 S.E.2d 150 (1967).

Hit-and-Run Prosecution Not Barred by Acquittal of Involuntary Manslaughter. — In a prosecution for hit-and-run driving, the trial court properly refused to submit an issue of former acquittal based upon a prior prosecution for involuntary manslaughter arising out of the same collision, since the offenses are different, both in law and in fact, and therefore the plea of former jeopardy was inapposite as a matter of law. State v. Williams, 229 N.C. 415, 50 S.E.2d 4 (1948).

Guest Passenger Not Necessarily Guilty as Aider and Abettor. — Where the owner and driver of an automobile fails to stop and give his name, address and license number after an accident resulting in injury to a person, in violation of this section, an occupant of the car, merely because he is a guest passenger in the car driven by the owner, is not guilty as an aider and abettor. State v. Dutch, 246 N.C. 438, 98 S.E.2d 475 (1957).

Evidence of Aiding Driver in Avoiding Arrest Held to Support Charge as Accessory After the Fact. — In a prosecution of defendant for being an accessory after the fact to the willful failure immediately to stop a motor vehicle at the scene of an accident and collision resulting in injury or death, evidence was sufficient to be submitted to the jury where it tended to show that a third person, while driving an automobile owned by defendant, struck, injured and killed a named person; that the driver knew he had struck a person but did not stop at the scene of the accident; and that upon learning that the driver had struck a person and had not stopped, defendant, who was not in the car nor present at the scene of the accident, assisted the driver in avoiding apprehension, arrest and punishment for such offense. State v. Fearing, 50 N.C. App. 475, 274 S.E.2d 356, aff'd in part and rev'd in part on other grounds, 304 N.C. 499, 284 S.E.2d 479

(1981). See also, State v. Fearing, 304 N.C. 471, 284 S.E.2d 487 (1981).

Evidence of prior convictions for driving under the influence can properly be considered as an aggravating factor in sentencing a defendant for hit and run personal injury, impairment not being an element of the offense. State v. Ragland, 80 N.C. App. 496, 342 S.E.2d 532 (1986).

Applied in State v. Smith, 238 N.C. 82, 76 S.E.2d 363 (1953); State v. Nall, 239 N.C. 60, 79 S.E.2d 354 (1953); State v. Hollingsworth, 263 N.C. 158, 139 S.E.2d 235 (1964); State v. Harrelson, 265 N.C. 589, 144 S.E.2d 650 (1965); State v. Mohrmann, 265 N.C. 594, 144 S.E.2d 645 (1965); State v. Moses, 272 N.C. 509, 158 S.E.2d 617 (1968); State v. Markham, 5 N.C. App. 391, 168 S.E.2d 49 (1969); State v. Alston, 6 N.C. App. 200, 169 S.E.2d 520 (1969); State v. Moore, 19 N.C. App. 742, 200 S.E.2d 200 (1973); State v. Rimmer, 25 N.C. App. 637, 214 S.E.2d 225 (1975); State v. Cobbins, 66 N.C. App. 616, 311 S.E.2d 653 (1984); State v. Carrington, 74 N.C. App. 40, 327 S.E.2d 594 (1985); State v. Mobley, 86 N.C. App. 528, 358 S.E.2d 689 (1987); Hutton v. Logan, 152 N.C. App. 94, 566 S.E.2d 782, 2002 N.C. App. LEXIS 884 (2002).

Cited in State v. Newton, 207 N.C. 323, 177 S.E. 184 (1934); State v. Midgett, 214 N.C. 107, 198 S.E. 613 (1938); Leary v. Norfolk S. Bus Corp., 220 N.C. 745, 18 S.E.2d 426 (1942); State v. Collins, 247 N.C. 248, 100 S.E.2d 492 (1957); Punch v. Landis, 258 N.C. 114, 128 S.E.2d 224 (1962); State v. Tise, 39 N.C. App. 495, 250 S.E.2d 674 (1979); State v. Fearing, 304 N.C. 471, 284 S.E.2d 479 (1981); State v. Duvall, 304 N.C. 557, 284 S.E.2d 495 (1981); State v. Duvall, 50 N.C. App. 684, 275 S.E.2d 842 (1981); State v. Crabb, 55 N.C. App. 172, 284 S.E.2d 690 (1981); State v. Simpson, 61 N.C. App. 151, 300 S.E.2d 412 (1983); State v. Green, 77 N.C. App. 429, 335 S.E.2d 176 (1985); State v. Brown, 87 N.C. App. 13, 359 S.E.2d 265 (1987); State v. Brunson, 96 N.C. App. 347, 385 S.E.2d 542 (1989); State v. Brunson, 327 N.C. 244, 393 S.E.2d 860 (1990).

II. WARRANTS AND INDICTMENTS.

Allegations of Failure to Give Information Only Relevant Where Defendant Stopped at Scene. — Allegations in warrant that defendant failed to give his name, address, operator's license number and the registration number of his vehicle would become relevant only if there was some evidence that he immediately stopped at the scene. State v. Lucas, 58 N.C. App. 141, 292 S.E.2d 747, cert. denied, 306 N.C. 390, 293 S.E.2d 593 (1982).

Warrant Held Insufficient. — Warrant was insufficient to charge the offense of leaving the scene of an accident where it did not charge defendant with operating the motor vehicle involved in the accident and did not charge that he failed to give his name, address and driver's license number before leaving the scene of the accident. State v. Wiley, 20 N.C. App. 732, 203 S.E.2d 95 (1974).

For additional case holding warrant insufficient, see State v. Morris, 235 N.C. 393, 70 S.E.2d 23 (1952).

Failure of indictment to designate street or highway on which collision occurred is not fatal. State v. Smith, 264 N.C. 575, 142 S.E.2d 149 (1965).

Nor Is Failure of Warrant to Set Out Description or Name of Owner of Property Damaged. — In a prosecution under this section, charging defendant with failing to stop his automobile after an accident resulting in property damage, the fact that the warrant failed to set out any description of the property damaged other than the word "automobile" and failed to state the name of the owner was not fatal. State v. Crutchfield, 5 N.C. App. 586, 169 S.E.2d 43 (1969).

Proof That All Victims Were Killed as Alleged Held Unnecessary. — If the State satisfied the jury beyond a reasonable doubt that defendant was the driver of an automobile involved in an accident resulting in injuries to the six named persons in the indictment, and did unlawfully, willfully and feloniously fail to stop such automobile at the scene of the accident, it would be sufficient to justify conviction of the defendant on the first count in the indictment; it would not be necessary for the State to prove that all of the six named persons were killed, as alleged in the indictment. State v. Wilson, 264 N.C. 373, 141 S.E.2d 801 (1965).

Warrant as Cure for Defective Indictment in Case Transferred for Jury Trial. — Where a prosecution for violating this section, a misdemeanor in the exclusive jurisdiction of a municipal-county court, was transferred to the superior court upon defendant's demand for a jury trial, the jurisdiction of the superior court was limited to the charge in the warrant; therefore, the warrant constituted an essential part of the record, so that any failure of the indictment to identify the property damaged and the owner thereof was cured when the warrant supplied this information, thus affording defendant protection against another prosecution for the same offense. State v. Smith, 264 N.C. 575, 142 S.E.2d 149 (1965).

§ 20-166.1. Reports and investigations required in event of accident.

(a) Notice of Accident. — The driver of a vehicle involved in a reportable accident must immediately, by the quickest means of communication, notify the appropriate law enforcement agency of the accident. If the accident occurred in a city or town, the appropriate agency is the police department of the city or town. If the accident occurred outside a city or town, the appropriate agency is the State Highway Patrol or the sheriff's office or other qualified rural police of the county where the accident occurred.

(b) Insurance Verification. — When requested to do so by the Division, the driver of a vehicle involved in a reportable accident must furnish proof of financial responsibility.

(c) Parked Vehicle. — The driver of a motor vehicle that collides with another motor vehicle left parked or unattended on a highway of this State must report the collision to the owner of the parked or unattended motor vehicle. This requirement applies to an accident that is not a reportable accident as well as to one that is a reportable accident. The report may be made orally or in writing, must be made within 48 hours of the accident, and must include the following:

(1) The time, date, and place of the accident.
(2) The driver's name, address, and drivers license number.
(3) The registration plate number of the vehicle being operated by the driver at the time of the accident.

If the driver makes a written report to the owner of the parked or unattended vehicle and the report is not given to the owner at the scene of the accident, the report must be sent to the owner by certified mail, return receipt requested, and a copy of the report must be sent to the Division.

(d) Repealed by Session Laws 1995, c. 191, s. 2.

(e) Investigation by Officer. — The appropriate law enforcement agency must investigate a reportable accident. A law-enforcement officer who investigates a reportable accident, whether at the scene of the accident or by subsequent investigations and interviews, must make a written report of the accident within 24 hours of the accident and must forward it as required by this subsection. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault for the accident.

If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to the Division within 10 days after receiving the report.

When a person injured in a reportable accident dies as a result of the accident within 12 months after the accident and the death was not reported in the original report, the law enforcement officer investigating the accident must file a supplemental report that includes the death.

(f) Medical Personnel. — A county medical examiner must report to the Division the death of any person in a reportable accident and the circumstances of the accident. The medical examiner must file the report within five days after the death. A hospital must notify the medical examiner of the county in which the accident occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a reportable accident.

(g) Repealed by Session Laws 1987, c. 49.

(h) Forms. — The Division shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports shall be made in a format approved by the Commissioner. The following information shall be included about a reportable crash:

(1) The cause of the crash.
(2) The conditions existing at the time of the crash.
(3) The persons and vehicles involved.
(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2.

(i) Effect of Report. — A report of an accident made under this section by a person who is not a law enforcement officer is without prejudice, is for the use of the Division, and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of the accident. Any other report of an accident made under this section may be used in any manner as evidence, or for any other purpose, in any trial, civil or criminal, as permitted under the rules of evidence. At the demand of a court, the Division must give the court a properly executed certificate stating that a particular accident report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by persons who are not law enforcement officers or medical examiners are not public records. The reports made by law enforcement officers and medical examiners are public records and are open to inspection by the general public at all reasonable times. The Division must give a certified copy of one of these reports to a member of the general public who requests a copy and pays the fee set in G.S. 20-42.

(j) Statistics. — The Division may periodically publish statistical information on motor vehicle accidents based on information in accident reports. The Division may conduct detailed research to determine more fully the cause and control of accidents and may conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and accident prevention.

(k) Punishment. — A violation of any provision of this section is a misdemeanor of the Class set in G.S. 20-176. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577; 1971, c. 55; c. 763, s. 1; c. 958, ss. 2, 3; 1973, c. 1133, ss. 1, 2; c. 1330, s. 29; 1975, c. 307; c. 716, s. 5; 1979, c. 667, s. 33; 1981, c. 690, s. 14; 1983, c. 229, ss. 1, 2; 1985, c. 764, s. 33; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 49; 1993, c. 539, ss. 376, 377; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 191, s. 2; 1998-182, s. 12.1; 1999-452, s. 19.)

Legal Periodicals. — For brief comment on this section, see 31 N.C.L. Rev. 419 (1953).

For note on the State's inability to suspend the driver's license of a bankrupt who fails to satisfy an accident judgment debt, see 50 N.C.L. Rev. 350 (1972).

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

CASE NOTES

Duties Imposed on Driver and Not Owner. — The duties imposed by this section are duties which the law imposes upon the driver, not upon the owner. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

What Is Required of Driver by This Section. — This section requires the driver of any vehicle involved in a collision resulting in the injury or death of any person to give notice of the collision to police officers and within 24 hours to make a written report to the Department (now Division) of Motor Vehicles upon a form supplied by it. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Information Required from Operator. — The operator of a motor vehicle was required by former G.S. 20-279.4 to inform the Department (now Division), when he notified it of the accident, whether he carried liability insurance or was exempt from the statutory provision. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Defendant was properly convicted of giving false information for a motor vehicle crash report in violation of G.S. 20-279.31(b) when defendant falsely stated that defendant drove a vehicle involved in a crash, because, inter alia, while G.S. 20-166.1(h) did not list "driver's identity" with the information that "shall be included," the remaining portions of the statute preceding and following that section imposed an explicit duty on drivers to provide the drivers' name, address, and other information in the event of a reportable accident, G.S. 20-166(b), (c1), G.S. 20-166.1(a) — (c), so it could be inferred that the term "persons and vehicles involved" necessarily included the identity of the driver. State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

No Statement to Officer Required. — This section contains no provision requiring a driver involved in a collision which must be reported to make any statement to the officer. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Duties Imposed by Subsection (e). — Subsection (e) of this section makes it the duty of the State Highway Patrol to investigate all collisions required under this section to be reported to it, and requires the investigating officer to make his report in writing to the Department (now Division) of Motor Vehicles, which report is open to inspection by the public. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Right of Injured Party Not Impaired by Insured's Failure to Notify Insurer or Report Accident. — The right of an injured party, after recovery of unsatisfied judgment against insured, to recover against insurer in an assigned risk liability policy could not be defeated by the failure of insured to notify insurer of the accident or failure of insured to file an accident report with the Department (now Division) of Motor Vehicles. Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962).

Applied in Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962); Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972); Stalls v. Penny, 62 N.C. App. 511, 302 S.E.2d 912 (1983); State v. Carrington, 74 N.C. App. 40, 327 S.E.2d 594 (1985).

Cited in Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963); Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964); Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971); State v. Francum, 39 N.C. App. 429, 250 S.E.2d 705 (1979); State v. Duvall, 50 N.C. App. 684, 275 S.E.2d 842 (1981); State v. Adams, 88 N.C. App. 139, 362 S.E.2d 789 (1987).

OPINIONS OF ATTORNEY GENERAL

Confidentiality provisions of § 7A-675 [see now § 7B-2901] do not prohibit identification in collision report filed pursuant to subsection (e) of person under 18 years involved in collision. See opinion of Attorney General to Mr. Maurice A. Cawn, Police Attorney, City of Greensboro, 58 N.C.A.G. 33 (May 17, 1988).

§ 20-166.2. Duty of passenger to remain at the scene of an accident.

(a) The passenger of any vehicle who knows or reasonably should know that the vehicle in which he or she is a passenger is involved in an accident or collision shall not willfully leave the scene of the accident by acting as the driver of a vehicle involved in the accident until a law enforcement officer completes the investigation of the accident or collision or authorizes the passenger to leave, unless remaining at the scene places the passenger or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the passenger may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from a significant risk of injury. If the passenger does leave the scene of an accident by driving a vehicle involved in the accident for a reason permitted by this subsection, the passenger must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class H felony if the accident or collision is described in G.S.

20-166(a). A willful violation of this subsection is a Class 1 misdemeanor if the accident or collision is a reportable accident described in G.S. 20-166(c).

(b) In addition to complying with the requirement of subsection (a) of this section, the passenger shall give the passenger's name, address, drivers license number, and the license plate number of the vehicle in which the passenger was riding, if possible, to the person struck or the driver or occupants of any vehicle collided with, provided that the person or persons are physically and mentally capable of receiving the information, and shall render to any person injured in the accident or collision reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person. A violation of this subsection is a Class 1 misdemeanor. (2005-460, s. 2.)

§ 20-167. Vehicles transporting explosives.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. (1937, c. 407, s. 129; 1985, c. 454, s. 7.)

CASE NOTES

Cited in Latham v. Elizabeth City Orange Crush Bottling Co., 213 N.C. 158, 195 S.E. 372 (1938).

§ 20-167.1. Transportation of spent nuclear fuel.

(a) No person, firm or corporation shall transport upon the highways of this State any spent nuclear fuel unless such person, firm, or corporation notifies the State Highway Patrol in advance of transporting the spent nuclear fuel.

(b) The provisions of this section shall apply whether or not the fuel is for delivery in North Carolina and whether or not the shipment originated in North Carolina.

(c) The Radiation Protection Commission is authorized to adopt, promulgate, amend, and repeal rules and regulations necessary to implement the provisions of this section.

(d) Any person, firm or corporation violating any provision of this section is guilty of a Class 3 misdemeanor and shall be punished only by a fine of not less than five hundred dollars ($500.00), and each unauthorized shipment shall constitute a separate offense. (1977, c. 839, s. 1; 1985, c. 764, s. 33.1; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 539, s. 378; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-168. Drivers of State, county, and city vehicles subject to the provisions of this Article.

(a) Subject to the exceptions in subsection (b), the provisions of this Article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the State or any political subdivision thereof.

(b) While actually engaged in maintenance or construction work on the highways, but not while traveling to or from such work, drivers of vehicles owned or operated by the State or any political subdivision thereof are exempt from all provisions of this Article except:

(1) G.S. 20-138.1. Impaired driving.
(2) Repealed by Session Laws 1983, c. 435, s. 28.

(3) G.S. 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.
(4) G.S. 20-140. Reckless driving.
(5) Repealed by Session Laws 1983, c. 435, s. 38.
(6) G.S. 20-141. Speed restrictions.
(7) G.S. 20-141.3. Unlawful racing on streets and highways.
(8) G.S. 20-141.4. Felony and misdemeanor death by vehicle. (1937, c. 407, s. 130; 1973, c. 1330, s. 30; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 28.)

CASE NOTES

Applied in Northwestern Distribs., Inc. v. North Carolina Dep't of Transp., 41 N.C. App. 548, 255 S.E.2d 203 (1979); Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983).

Cited in Babbs v. Eury, 206 N.C. 679, 175 S.E. 100 (1934).

§ 20-169. Powers of local authorities.

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:
(1) Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous.
(2) Prohibiting other than one-way traffic upon certain highways.
(3) Regulating the use of the highways by processions or assemblages.
(4) Regulating the speed of vehicles on highways in public parks.
(5) Authorizing law enforcement or fire department vehicles, ambulances, and rescue squad emergency service vehicles, equipped with a siren to preempt any traffic signals upon city streets within local authority boundaries or, with the approval of the Department of Transportation, on State highways within the boundaries of local authorities. The Department of Transportation shall respond to requests for approval within 60 days of receipt of a request.

Signs shall be erected giving notices of the special limits and regulations under subdivisions (1) through (4) of this section. (1937, c. 407, s. 131; 1949, c. 947, s. 2; 1955, c. 384, s. 2; 1963, c. 559; 1973, c. 507, s. 5; 1979, c. 298, s. 2; 1991, c. 530, s. 5; 1999-310, s. 1.)

Local Modification. — City of Greensboro: 1953, c. 1075.

CASE NOTES

Municipality Conformance with MUTCD. — Under the North Carolina General Statutes, municipalities are required to conform to the traffic control device standards promulgated in the Manual on Uniform Traffic Control Devices (MUTCD) only with respect to state highways. Talian v. City of Charlotte, 98 N.C. App. 281, 390 S.E.2d 737, aff'd, 327 N.C. 629, 398 S.E.2d 330 (1990).

This section authorizes municipal corporations to install automatic traffic-control signals and compel their observance by ordinance. Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965).

In consequence of this section, a town acted within the limits of its authority as a municipal corporation in installing automatic traffic-control signals and enacting an ordinance to compel their observance. Cox v. Hennis Freight Lines, 236 N.C. 72, 72 S.E.2d 25 (1952).

Ambulances May Be Required to Observe Lights. — The provisions of this section are sufficiently broad to authorize the adoption of an ordinance requiring ambulances to observe traffic lights. Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965).

Legal Rights Dependent on Ordinance. — When automatic traffic-control signals are installed pursuant to a municipal ordinance authorized by this section, the respective rights of motorists depend upon the provisions of the particular ordinance authorizing such installations. Cogdell v. Taylor, 264 N.C. 424, 142 S.E.2d 36 (1965).

Allegation and Proof of Ordinance. — Before legal rights may be predicated on an ordinance regulating traffic by means of automatic signal-control devices, such an ordinance must be alleged and established by proper evidence. Smith v. Buie, 243 N.C. 209, 90 S.E.2d 514 (1955).

Violation of Ordinance as Negligence Per Se. — Violation of a valid ordinance adopted pursuant to this section, requiring a motorist to stop in obedience to a red traffic-control signal, is negligence per se. Currin v. Williams, 248 N.C. 32, 102 S.E.2d 455 (1958).

For application of former statute prohibiting conflicting ordinances, see State v. Freshwater, 183 N.C. 762, 111 S.E. 161 (1922).

Cited in Stewart v. Yellow Cab Co., 225 N.C. 654, 36 S.E.2d 256 (1945); Rogers v. Rogers, 2 N.C. App. 668, 163 S.E.2d 645 (1968); Lonon v. Talbert, 103 N.C. App. 686, 407 S.E.2d 276 (1991).

OPINIONS OF ATTORNEY GENERAL

Reduction of Speed Limits on State Highways in School Zones Within Municipalities. — Section 20-141.1 must be construed together with this section, G.S. 20-141, and other statutes, and when so construed, the provision for concurring ordinances in G.S. 20-141 when reducing speed limits on state highways in school zones within municipalities must be given effect and must be complied with. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

A municipal ordinance adopted pursuant to G.S. 20-141.1 reducing the speed in a school zone on a State Highway System street is not effective without a concurring ordinance by the Department of Transportation as provided for by G.S. 20-141(f). See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (Feb. 26, 1988).

§ 20-170. This Article not to interfere with rights of owners of real property with reference thereto.

Nothing in this Article shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as matter of right from prohibiting such use nor from requiring other or different or additional conditions than those specified in this Article or otherwise regulating such use as may seem best to such owner. (1937, c. 407, s. 132.)

§ 20-171. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.

Every person riding an animal or driving any animal drawing a vehicle upon a highway shall be subject to the provisions of this Article applicable to the driver of a vehicle, except those provisions of the Article which by their nature can have no application. (1939, c. 275.)

CASE NOTES

The legislature intended the provisions of the traffic laws of North Carolina applicable to the drivers of "vehicles" to apply to horseback riders irrespective of whether a horse is a vehicle. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Requirement that a person entering a public highway from a private road or drive must yield the right-of-way to vehicles on the public highway applies to a person riding an animal as well as to a person driving a motor vehicle. Watson v. Stallings, 270 N.C. 187, 154 S.E.2d 308 (1967).

Part 10A. Operation of Bicycles.

§ 20-171.1. Definitions.

As used in this Part, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them:

Bicycle. — A nonmotorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled. (1977, c. 1123, s. 1.)

§ 20-171.2. Bicycle racing.

(a) Bicycle racing on the highways is prohibited except as authorized in this section.

(b) Bicycle racing on a highway shall not be unlawful when a racing event has been approved by State or local authorities on any highway under their respective jurisdictions. Approval of bicycle highway racing events shall be granted only under conditions which assure reasonable safety for all race participants, spectators and other highway users, and which prevent unreasonable interference with traffic flow which would seriously inconvenience other highway users.

(c) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable thereto, provided that traffic control is adequate to assure the safety of all highway users. (1977, c. 1123, s. 1.)

§§ 20-171.3 through 20-171.5: Reserved for future codification purposes.

Part 10B. Child Bicycle Safety Act.

§ 20-171.6. Short title.

This Article shall be known and may be cited as the "Child Bicycle Safety Act." (2001-268, s. 1.)

§ 20-171.7. Legislative findings and purpose.

(a) The General Assembly finds and declares that:

(1) Disability and death of children resulting from injuries sustained in bicycling accidents are a serious threat to the public health, welfare, and safety of the people of this State, and the prevention of that disability and death is a goal of all North Carolinians.

(2) Head injuries are the leading cause of disability and death from bicycling accidents.

(3) The risk of head injury from bicycling accidents is significantly reduced for bicyclists who wear proper protective bicycle helmets; yet helmets are worn by fewer than five percent (5%) of child bicyclists nationwide.

(4) The risk of head injury or of any other injury to a small child who is a passenger on a bicycle operated by another person would be significantly reduced if any child passenger sat in a separate restraining seat.

(b) The purpose of this Article is to reduce the incidence of disability and death resulting from injuries incurred in bicycling accidents by requiring that while riding on a bicycle on the public roads, public bicycle paths, and other public rights-of-way of this State, all bicycle operators and passengers under the age of 16 years wear approved protective bicycle helmets; that all bicycle passengers who weigh less than 40 pounds or are less than 40 inches in height be seated in separate restraining seats; and that no person who is unable to maintain an erect, seated position shall be a passenger in a bicycle restraining seat, and all other bicycle passengers shall be seated on saddle seats. (2001-268, s. 1.)

§ 20-171.8. Definitions.

As used in this Article, the following terms have the following meanings:

(1) "Bicycle" means a human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. This term also includes a human-powered vehicle, designed to transport by the action of pedaling which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle.

(2) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) "Other public right-of-way" means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision of the State and is designed for use and used by vehicular and/or pedestrian traffic.

(4) "Passenger" means a person who travels on a bicycle in any manner except as an operator.

(5) "Protective bicycle helmet" means a piece of headgear that meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(6) "Public bicycle path" means a right-of-way under the jurisdiction and control of this State or a local political subdivision of the State for use primarily by bicycles and pedestrians.

(7) "Public roadway" means a right-of-way under the jurisdiction and control of this State or a local political subdivision of the State for use primarily by motor vehicles.

(8) "Restraining seat" means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in such seat and protect such passenger from the moving parts of the bicycle.

(9) "Tricycle" means a three-wheeled, human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level. (2001-268, s. 1.)

§ 20-171.9. Requirements for helmet and restraining seat use.

With regard to any bicycle used on a public roadway, public bicycle path, or other public right-of-way:

(a) It shall be unlawful for any parent or legal guardian of a person below the age of 16 to knowingly permit that person to operate or be a passenger on a bicycle unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any parent or legal guardian of a person below the age of 16 to knowingly permit that person to be a passenger on a bicycle unless all of the following conditions are met:

(1) The person is able to maintain an erect, seated position on the bicycle.

(2) Except as provided in subdivision (3) of this subsection, the person is properly seated alone on a saddle seat (as on a tandem bicycle).

(3) With respect to any person who weighs less than 40 pounds, or is less than 40 inches in height, the person can be and is properly seated in and adequately secured to a restraining seat.

(c) No negligence or liability shall be assessed on or imputed to any party on account of a violation of subsection (a) or (b) of this section.

(d) Violation of this section shall be an infraction. Except as provided in subsection (e) of this section, any parent or guardian found responsible for violation of this section may be ordered to pay a civil fine of up to ten dollars ($10.00), inclusive of all penalty assessments and court costs.

(e) In the case of a first conviction of this section, the court may waive the fine upon receipt of satisfactory proof that the person responsible for the infraction has purchased or otherwise obtained, as appropriate, a protective bicycle helmet or a restraining seat, and uses and intends to use it whenever required under this section. (2001-268, s. 1.)

Cross References. — For requirements that operators and passengers on motorcycles and mopeds wear safety helmets, see G.S. 20-140.4.

§§ 20-171.10 through 20-171.14: Reserved for future codification purposes.

Part 10C. Operation of All-Terrain Vehicles.

§ 20-171.15. Age restrictions.

(a) It is unlawful for any parent or legal guardian of a person less than eight years of age to knowingly permit that person to operate an all-terrain vehicle.

(b) It is unlawful for any parent or legal guardian of a person less than 12 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity of 70 cubic centimeter displacement or greater.

(c) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity greater than 90 cubic centimeter displacement.

(d) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle unless the person is under the continuous visual supervision of a person 18 years of age or older while operating the all-terrain vehicle.

(e) Subsections (b) and (c) of this section do not apply to any parent or legal guardian of a person born on or before August 15, 1997, who permits that person to operate an all-terrain vehicle and who establishes proof that the parent or legal guardian owned the all-terrain vehicle prior to August 15, 2005. (2005-282, s. 2.)

§ 20-171.16. Passengers.

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator. (2005-282, s. 2.)

§ 20-171.17. Prohibited acts by sellers.

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of eight years.

(2) With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age.

(3) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age. (2005-282, s. 2.)

§ 20-171.18. Equipment requirements.

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition. (2005-282, s. 2.)

§ 20-171.19. Prohibited acts by owners and operators.

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(a1) Notwithstanding subsection (a) of this section, any person employed by a supplier of retail electric service, while engaged in power line inspection, may operate an all-terrain vehicle while wearing both of the following:

(1) Head protection equipped with a chin strap that conforms to the standards applicable to suppliers of retail electric service adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor.

(2) Eye protection that conforms to the standards applicable to suppliers of retail electric service adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor.

(b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

(g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at anytime when visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws. (2005-282, s. 2; 2006-259, s. 10(a).)

§ 20-171.20. Safety training and certificate.

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance. The North Carolina Community College System is authorized to provide all-terrain vehicle safety training, approved by the Commissioner, to persons less than 18 years of age. (2005-282, s. 2; 2007-433, s. 4.)

§ 20-171.21. Penalties.

Any person violating any of the provisions of this Part shall be responsible for an infraction and may be subject to a penalty of not more than two hundred dollars ($200.00). (2005-282, s. 2; 2008-187, s. 11.)

Effect of Amendments. — Session Laws 2008-187, s. 11, effective August 7, 2008, substituted "penalty" for "fine."

§ 20-171.22. Exceptions.

(a) The provisions of this Part do not apply to any owner, operator, lessor, or renter of a farm or ranch, or that person's employees or immediate family or household members, when operating an all-terrain vehicle while engaged in farming operations.

(b) The provisions of this Part do not apply to any person using an all-terrain vehicle for hunting or trapping purposes if the person is otherwise lawfully engaged in those activities.

(c) The provisions of G.S. 20-171.19(a) do not apply to any person 16 years of age or older if the person is otherwise lawfully using the all-terrain vehicle on any ocean beach area where such vehicles are allowed by law. As used in this subsection, "ocean beach area" means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. (2005-282, s. 2; 2008-91, s. 1.)

Effect of Amendments. — Session Laws 2008-91, s. 1, effective July 11, 2008, added subsection (c).

§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.

(a) Law enforcement officers acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge. (2007-433, s. 1.)

§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.

(a) Municipal and county employees may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Ansonville, Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Davidson, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Lowell, Manteo, Murphy, Nags Head, North Topsail Beach, Oakboro, Ocean Isle Beach, Pine Knoll Shores, Stanley, Surf City, Sylva, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only. (2007-433, s. 2; 2008-99, s. 1.)

Effect of Amendments. — Session Laws 2008-99, s. 1, effective July 15, 2008, inserted "Lowell, Manteo" in subsection (f).

§ 20-171.25. Motorized all-terrain vehicle use by certain employees of natural gas utilities permitted on public highways and rights-of-way.

(a) Natural gas utility employees and contractors engaged in pipeline safety, leak survey, and patrolling activities, acting in the course and scope of their employment, may operate motorized all-terrain vehicles owned or leased by the utility on public highways and rights-of-way only to the extent necessary to perform those activities.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official company identification card or badge. (2008-156, s. 2.)

Editor's Note. — Session Laws 2008-156, s. 4, made this section effective August 3, 2008.

Part 11. Pedestrians' Rights and Duties.

§ 20-172. Pedestrians subject to traffic-control signals.

(a) The Board of Transportation, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to erect or install, at intersections or other appropriate places, special pedestrian control signals exhibiting the words or symbols "WALK" or "DON'T WALK" as a part of a system of traffic-control signals or devices.

(b) Whenever special pedestrian-control signals are in place, such signals shall indicate as follows:

(1) WALK. — Pedestrians facing such signal may proceed across the highway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) DON'T WALK. — No pedestrian shall start to cross the highway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "WALK" signal shall proceed to a sidewalk or safety island while the "DON'T WALK" signal is showing.

(c) Where a system of traffic-control signals or devices does not include special pedestrian-control signals, pedestrians shall be subject to the vehicular traffic-control signals or devices as they apply to pedestrian traffic.

(d) At places without traffic-control signals or devices, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in Part 11 of this Article. (1937, c. 407, s. 133; 1973, c. 507, s. 5; c. 1330, s. 31; 1987, c. 125.)

CASE NOTES

A pedestrian at a crosswalk acquires no additional rights against a red traffic light. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Rights of Pedestrians Proceeding in Accord with Lights Not Impaired. — The legislature did not intend that the provisions subjecting pedestrians to traffic lights would impair their rights as pedestrians proceeding in accord with such lights. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Party Having Green Light Has Superior

Right. — Although one party may be a motorist and the other a pedestrian, whoever has the green light has the superior right to traverse the intersection and to assume that the other will recognize it and conduct himself accordingly. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Charge in Civil Actions. — It is the duty of the court to charge the statutory duty of drivers to pedestrians in an action for damages for their violation; this error is not cured by a general charge as to the use of necessary prudence and is reversible even in the absence of a prayer for more specific instructions. Bowen v. Schnibben, 184 N.C. 248, 114 S.E. 170 (1922).

Cited in Metcalf v. Foister, 232 N.C. 355, 61 S.E.2d 77 (1950); Spencer v. McDowell Motor Co., 236 N.C. 239, 72 S.E.2d 598 (1952).

§ 20-173. Pedestrians' right-of-way at crosswalks.

(a) Where traffic-control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at or near an intersection, except as otherwise provided in Part 11 of this Article.

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(c) The driver of a vehicle emerging from or entering an alley, building entrance, private road, or driveway shall yield the right-of-way to any pedestrian, or person riding a bicycle, approaching on any sidewalk or walkway extending across such alley, building entrance, road, or driveway. (1937, c. 407, s. 134; 1973, c. 1330, s. 32.)

CASE NOTES

Relative Rights of Pedestrians and Motorists in Absence of Signals. — In the absence of signals controlling traffic, the relative rights of pedestrians and motorists are prescribed by this section and G.S. 20-174. Griffin v. Pancoast, 257 N.C. 52, 125 S.E.2d 310 (1962).

Absence of Sidewalks and Traffic Signals. — Where plaintiff-pedestrian crossed at an intersection where there were no traffic signals and no sidewalks on either side of the street, he was not entitled to an instruction based upon statute imposing duty of care on motorist toward a pedestrian. Tucker v. Bruton, 102 N.C. App. 117, 401 S.E.2d 130 (1991).

The North Carolina Supreme Court has defined an "unmarked crosswalk" as "that area within an intersection which also lies within the lateral boundaries of a sidewalk projected across the intersection." Under this definition, the plaintiff must show that he was crossing at an area which was the projected extension of the sidewalk from one side of the street to the other. Tucker v. Bruton, 102 N.C. App. 117, 401 S.E.2d 130 (1991).

The term "unmarked crosswalk at an intersection," as used in subsection (a) of this section and G.S. 20-174(a), means that area within an intersection which also lies within the lateral boundaries of a sidewalk projected across the intersection. Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968); Bowen v. Gardner, 3 N.C. App. 529, 165 S.E.2d 545, rev'd on other grounds, 275 N.C. 363, 168 S.E.2d 47 (1969); Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969); Downs v. Watson, 8 N.C. App. 13, 173 S.E.2d 556 (1970).

This section extends the right-of-way to a pedestrian within "an unmarked crosswalk at an intersection." The focus is not on the lines, but on the proximity to an intersection, which is a place where a motorist should expect pedestrians will have to cross. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Pedestrian's Right-of-Way Not Affected by Failure to Mark Crosswalk. — If a pedestrian was crossing at an intersection, as defined in G.S. 20-38(12) (now G.S. 20-4.01(16)), he would have the right-of-way, regardless of the failure to mark a place at the intersection for pedestrians to use in crossing. Griffin v. Pancoast, 257 N.C. 52, 125 S.E.2d 310 (1962).

Where gutter repair work and barricades prevented exit from the street within the crosswalk lines, it would be unreasonable and unjust to say that plaintiff forfeited her intersection crossing right-of-way by stepping a few feet outside the painted lines to skirt a barricade. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Crossing at Places Other Than Cross-

walks. — Subsection (a) of this section and G.S. 20-174(a) do not prohibit pedestrians from crossing streets or highways at places other than marked crosswalks or unmarked crosswalks at intersections. Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968). But see § 20-174(c).

Duty of Motorist to Yield Right-of-Way. — It is the duty of a motorist to yield the right-of-way to a pedestrian in an unmarked crosswalk at an intersection. Bowen v. Gardner, 3 N.C. App. 529, 165 S.E.2d 545, rev'd on other grounds, 275 N.C. 363, 168 S.E.2d 47 (1969).

Duty of Pedestrian to Yield Right-of-Way. — If a pedestrian elects to cross a street or a highway at a place which is neither a marked crosswalk nor an unmarked crosswalk at an intersection, subsection (a) of this section and G.S. 20-174(a) require that he yield the right-of-way to vehicles. Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968).

Both pedestrian and motorist have the right to assume the other will obey the rules of the road and accord the right-of-way to the one having that privilege. Griffin v. Pancoast, 257 N.C. 52, 125 S.E.2d 310 (1962).

A right-of-way is not absolute, and even a pedestrian with the right-of-way must exercise ordinary care for her own safety. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

But where the pedestrian has the right-of-way, he is not required to anticipate negligence on the part of others. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

To a pedestrian the right-of-way means that he has the right to continue in his direction of travel without anticipating negligence on the part of motorists. Unless the circumstances are sufficient to give him notice to the contrary, he may act upon the assumption, even to the last moment, that motorists will recognize such a preferential right. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

If a person is crossing in an unmarked crosswalk at an intersection, he is not required to anticipate negligence on the part of others. In the absence of anything which gives or should give notice to the contrary, he is entitled to assume, and to act upon the assumption, even to the last moment, that others will observe and obey the statute which requires them to yield the right-of-way. Bowen v. Gardner, 275 N.C. 363, 168 S.E.2d 47 (1969).

And a pedestrian who has the right-of-way at a crosswalk may not be held contributorily negligent as a matter of law for failure to see an approaching vehicle or for failure to use ordinary care for his or her own safety. The pedestrian is not required to anticipate negligence on the part of others. McCoy v. Dowdy, 16 N.C. App. 242, 192 S.E.2d 81 (1972).

Where a pedestrian had the right-of-way afforded her by an intersection crosswalk, it was erroneous to find contributory negligence as a matter of law simply because she failed to see defendant motorist approaching the intersection. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Whether a pedestrian, simply by failing to see a vehicle, failed to exercise due care is a jury question. The jury must determine whether the vehicle's speed, proximity or manner of operation would have put the pedestrian, had she seen the vehicle, on notice that the motorist did not intend to yield the right-of-way. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Effect of Traffic Control Signal on Pedestrian's Right-of-Way. — The right-of-way given a pedestrian by G.S. 20-155(c) at an intersection where there is no traffic-control signal is limited at an intersection where there is a traffic-control signal by subsection (a) of this section to the pedestrian having the right-of-way only when he is moving with the green light. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Section 20-155(c) may be construed to mean that a pedestrian's crosswalk right-of-way is not impaired when the movement of the pedestrian is in accord with the traffic lights. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

The effect of the exception in G.S. 20-155(c) as to intersections where traffic is regulated by traffic officers or traffic direction devices is not to subordinate the right-of-way of a pedestrian moving on a green light to that of a turning motorist. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

Applied in Keaton v. Blue Bird Taxi Co., 241 N.C. 589, 86 S.E.2d 93 (1955); Falls v. Williams, 261 N.C. 413, 134 S.E.2d 670 (1964); Blake v. Mallard, 262 N.C. 62, 136 S.E.2d 214 (1964); Nix v. Earley, 263 N.C. 795, 140 S.E.2d 402 (1965); Carter v. Murray, 7 N.C. App. 171, 171 S.E.2d 810 (1970).

Cited in Leary v. Norfolk S. Bus Corp., 220 N.C. 745, 18 S.E.2d 426 (1942); Spencer v. McDowell Motor Co., 236 N.C. 239, 72 S.E.2d 598 (1952); Reeves v. Campbell, 264 N.C. 224, 141 S.E.2d 296 (1965).

§ 20-174. Crossing at other than crosswalks; walking along highway.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the extreme left of the roadway or its shoulder facing traffic which may approach from the opposite direction. Such pedestrian shall yield the right-of-way to approaching traffic.

(e) Notwithstanding the provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (1937, c. 407, s. 135; 1973, c. 1330, s. 33.)

Legal Periodicals. — For article on proof of negligence in North Carolina, see 48 N.C.L. Rev. 731 (1970).

CASE NOTES

I. In General.
II. Motorist's Duty Under Subsection (e).
III. Negligence and Contributory Negligence.

I. IN GENERAL.

A pedestrian's right-of-way is limited by this section. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

A person walking along a public highway pushing a handcart is a "pedestrian" within the purview of subsection (d) of this section, and is not a driver of a vehicle within the meaning of G.S. 20-146 and 20-149. Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948).

The term "unmarked crosswalk at an intersection," as used in G.S. 20-173(a) and subsection (a) of this section, means that area within an intersection which also lies within the lateral boundaries of a sidewalk projected across the intersection. Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968); Bowen v. Gardner, 3 N.C. App. 529, 165 S.E.2d 545, rev'd on other grounds, 275 N.C. 363, 168 S.E.2d 47 (1969); Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969); Downs v. Watson, 8 N.C. App. 13, 173 S.E.2d 556 (1970).

Right-of-Way of Pedestrian Crossing Intersection. — A pedestrian crossing an intersection, as defined by G.S. 20-38(12) (now G.S. 20-4.01(16)), even though there is no marked crosswalk at that point, has the right-of-way over a motorist traversing the intersection. Jenkins v. Thomas, 260 N.C. 768, 133 S.E.2d 694 (1963).

Pedestrian Need Not Yield Right-of-Way at Unmarked Intersections. — An instruction placing the duty upon a pedestrian to yield the right-of-way to vehicles in traversing a highway at an unmarked intersection of highways must be held for error. Gaskins v. Kelly, 228 N.C. 697, 47 S.E.2d 34 (1948).

Subsection (a) and § 20-173(a) do not prohibit pedestrians from crossing streets or highways at places other than marked crosswalks or unmarked crosswalks at intersections. Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968). But see subsection (c).

But Pedestrian So Crossing Must Yield Right-of-Way. — A pedestrian crossing the highway at a place which is not within a marked crosswalk or within an unmarked crosswalk at an intersection is under a duty to yield the right-of-way to vehicles along the highway, subject to the duty of a motorist to exercise due care to avoid colliding with any pedestrian and to give warning by sounding his horn whenever necessary. Garmon v. Thomas, 241 N.C. 412, 85 S.E.2d 589 (1955).

It is the duty of a pedestrian, in crossing a highway at a point other than within a marked crosswalk or within an unmarked crosswalk at an intersection, to yield the right-of-way to a truck approaching upon the roadway. Tysinger v. Coble Dairy Prods., 225 N.C. 717, 36 S.E.2d 246 (1945); Grisanti v. United States, 284 F. Supp. 308 (E.D.N.C. 1968).

If the pedestrian elects to cross a street or a highway at a place which is not a marked crosswalk and not an unmarked crosswalk at an intersection, G.S. 20-173(a) and subsection (a) of this section require that he yield the right-of-way to vehicles. Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968).

Where intestate was crossing the street diagonally within the block, at a point which was neither at an intersection nor within a marked crosswalk, and the evidence disclosed no traffic control signals at the adjacent intersections, under the provisions of subsection (a) it was intestate's duty to "yield the right-of-way to all vehicles upon the roadway." Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965).

And Keep a Timely Lookout. — It is the duty of pedestrians to look before starting across a highway, and in the exercise of reasonable care for their own safety, to keep a timely lookout for approaching motor traffic on the highway to see what should have been seen and could have been seen if they had looked before starting across the highway. Rosser v. Smith, 260 N.C. 647, 133 S.E.2d 499 (1963); Charles v. Dougal, 685 F. Supp. 508 (E.D.N.C. 1988), aff'd, 869 F.2d 593 (4th Cir. 1989).

A pedestrian who crosses the street at a point where he does not have the right-of-way must constantly watch for oncoming traffic before he steps into the street and while he is crossing. Brooks v. Boucher, 22 N.C. App. 676, 207 S.E.2d 282, cert. denied, 286 N.C. 211, 209 S.E.2d 319 (1974); Dendy v. Watkins, 288 N.C. 447, 219 S.E.2d 214 (1975).

A pedestrian crossing the road at any point other than a marked crosswalk, or walking along or upon a highway, has a statutory duty to yield the right of way to all vehicles on the roadway. Such a pedestrian also has a common law duty to exercise reasonable care for his own safety by keeping a proper lookout for approaching traffic before entering the road and while on the roadway. Whitley v. Owens, 86 N.C. App. 180, 356 S.E.2d 815 (1987).

While a pedestrian (or motorist) has a right to assume that other motorists will use due care and obey the rules of the road, that right does not relieve him of the legal duty to maintain a proper lookout and otherwise exercise a reasonable degree of care for his own safety. Whitley v. Owens, 86 N.C. App. 180, 356 S.E.2d 815 (1987).

Subsection (a) was inapplicable to a case involving plaintiff who was struck by defendant's truck as she crossed in front of supermarket parking lot because plaintiff was crossing a public vehicular area rather than a roadway. The trial court therefore erred by imposing on plaintiff a duty to yield the right-of-way and by allowing the jury to evaluate plaintiff's conduct using an improper standard of care. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

It is unlawful to walk on the right-hand shoulder of a highway along the traveled portion thereof. Simpson v. Wood, 260 N.C. 157, 132 S.E.2d 369 (1963).

Applied in Sparks v. Willis, 228 N.C. 25, 44 S.E.2d 343 (1947); Combs v. United States, 122 F. Supp. 280 (E.D.N.C. 1954); Holland v. Malpass, 255 N.C. 395, 121 S.E.2d 576 (1961); Nix v. Earley, 263 N.C. 795, 140 S.E.2d 402 (1965); Jones v. Smith, 3 N.C. App. 396, 165 S.E.2d 56 (1969); Swain v. Williamson, 4 N.C. App. 622, 167 S.E.2d 491 (1969); Anderson v. Mann, 9 N.C. App. 397, 176 S.E.2d 365 (1970); Clark v. Bodycombe, 27 N.C. App. 146, 218 S.E.2d 216 (1975); Brooks v. Smith, 27 N.C. App. 223, 218 S.E.2d 489 (1975); Sessoms v. Roberson, 47 N.C. App. 573, 268 S.E.2d 24 (1980); McNeil v. Gardner, 104 N.C. App. 692, 411 S.E.2d 174 (1991); State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); Phillips ex rel. Schultz v. Holland, 107 N.C. App. 688, 421 S.E.2d 608 (1992).

Cited in Pack v. Auman, 220 N.C. 704, 18 S.E.2d 247 (1942); Metcalf v. Foister, 232 N.C. 355, 61 S.E.2d 77 (1950); Keaton v. Blue Bird Taxi Co., 241 N.C. 589, 86 S.E.2d 93 (1955); Jenks v. Morrison, 258 N.C. 96, 127 S.E.2d 895 (1962); Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Bowen v. Gardner, 275 N.C. 363, 168 S.E.2d 47 (1969); Duke v. Meisky, 12 N.C. App. 329, 183 S.E.2d 292 (1971); Tucker v. Bruton, 102 N.C. App. 117, 401 S.E.2d 130 (1991); Womack v. Stephens, 144 N.C. App. 57, 550 S.E.2d 18, 2001 N.C. App. LEXIS 325 (2001).

II. MOTORIST'S DUTY UNDER SUBSECTION (E).

Subsection (e) States the Common Law. — Both the common law and subsection (e) of this section provide that notwithstanding the provisions of subsection (d) "every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway." Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948); State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245, cert. denied, 301 N.C. 99, 273 S.E.2d 303, 301 N.C. 403, 273 S.E.2d 448 (1980), aff'd in part and rev'd in part, 304 N.C. 471, 284 S.E.2d 487 (1981).

Subsection (e) of this section states the common-law rule of negligence. Gathings v. Sehorn, 255 N.C. 503, 121 S.E.2d 873 (1961).

Independent of statute, it is the duty of the motorist at common law to exercise due care to avoid colliding with a pedestrian. Gamble v. Sears, 252 N.C. 706, 114 S.E.2d 677 (1960).

Motorist's Right-of-Way Subject to Subsection (e). — If a pedestrian was not injured at an intersection, but was struck when he stepped into a street at some point between one intersection and the next, the motorist would have the right-of-way. This right-of-way would, of course, be subject to the provisions of subsection (e). Griffin v. Pancoast, 257 N.C. 52, 125 S.E.2d 310 (1962).

Duty Under Subsection (e) Generally. — Under subsection (e) of this section, a motorist has the duty, which is applicable to all motorists generally, to operate his vehicle at a reasonable rate of speed, keep a lookout for persons on or near the highway, decrease his speed when special hazards exist with respect to pedestrians, and give warning of his approach by sounding his horn if the circumstances warrant. State v. Fearing, 48 N.C. App. 329, 269 S.E.2d 245, cert. denied, 301 N.C. 99, 273 S.E.2d 303, 301 N.C. 403, 273 S.E.2d 448 (1980), aff'd in part and rev'd in part on other grounds, 304 N.C. 471, 284 S.E.2d 487 (1981). See also, Morris v. Minix, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

Motorist Must Exercise Due Care. — It is the duty of a motor vehicle operator both at common law and under the express provisions of this section to "exercise due care to avoid colliding" with pedestrians on the highway. Rosser v. Smith, 260 N.C. 647, 133 S.E.2d 499 (1963); Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965).

Right of Motorist to Assume That Pedestrian Will Obey Law. — Where a pedestrian elects not to cross an intersection at a point where he has the right-of-way, but at a point where the motorist has the right-of-way, the motorist has the right to assume, until put on notice to the contrary, that the pedestrian will obey the law and yield the right-of-way. Jenkins v. Thomas, 260 N.C. 768, 133 S.E.2d 694 (1963).

Duty of Motorist Where Pedestrian Fails to Yield Right-of-Way. — Even though a pedestrian failed to yield the right-of-way as required by this section, it was the duty of the driver of an approaching vehicle, both at common law and under the express provisions of subsection (e), to "exercise due care to avoid colliding with" the pedestrian. Simpson v. Curry, 237 N.C. 260, 74 S.E.2d 649 (1953); Landini v. Steelman, 243 N.C. 146, 90 S.E.2d 377 (1955); Gamble v. Sears, 252 N.C. 706, 114 S.E.2d 677 (1960).

Or Where Pedestrian Crosses Unlawfully. — It is unlawful for a pedestrian to cross between intersections at which traffic-control signals are in operation except in a marked crosswalk, but where a pedestrian violates this provision a motorist is nonetheless required to exercise due care to avoid colliding with him. State v. Call, 236 N.C. 333, 72 S.E.2d 752 (1952).

A driver must make certain that pedestrians in front of him are aware of his approach. Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965).

Duty to Give Warning to Pedestrians. — While ordinarily a motorist is not required to anticipate that a pedestrian will leave a place of safety and get in a line of travel, when the circumstances are such that it should appear to the motorist that a pedestrian is oblivious of his approach, or when he may reasonably anticipate that the pedestrian will come into his way, it is his duty to give warning by sounding his horn. Williams v. Henderson, 230 N.C. 707, 55 S.E.2d 462 (1949).

A workman crossing a highway in an area marked by signs reading "Men Working" is in a lawful place where he has a right to be, and when apparently oblivious of danger, he is entitled to a signal of approach as much as, if not more than, an ordinary pedestrian in the highway. Kellogg v. Thomas, 244 N.C. 722, 94 S.E.2d 903 (1956).

While a driver of a motor vehicle is not required to anticipate that a pedestrian seen in a place of safety will leave it and get in the danger zone until some demonstration or movement on his part reasonably indicates that fact, he must give warning to one who is on the highway or in close proximity to it and is not on a sidewalk, who is apparently oblivious of the approach of the car, or to one whom the driver in the exercise of ordinary care may reasonably anticipate will come into his way. Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965).

It is a driver's duty to sound his horn in order that a pedestrian unaware of his approach may have timely warning. Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965).

Motorist's Duty Where Pedestrian Is Oblivious to Danger. — Where a pedestrian elects not to cross an intersection at a point where he has the right-of-way, but at a point where the motorist has the right-of-way, the mere fact that the pedestrian is oblivious to danger does not impose a duty on the motorist to yield the right-of-way; that duty arises when, and only when, the motorist sees, or in the exercise of reasonable care should see, that the pedestrian is not aware of the approaching danger and for that reason will continue to expose himself to peril. Jenkins v. Thomas, 260 N.C. 768, 133 S.E.2d 694 (1963).

If it appears that a pedestrian is oblivious for the moment to the nearness of a car and the speed at which it is approaching, ordinary care requires the driver to blow his horn, slow down and, if necessary, stop, to avoid inflicting injury. Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965).

Duty of Motorist to Child. — This section imposes upon a driver the legal duty to exercise proper precaution to avoid injury to a child, if by the exercise of reasonable care he can and should observe the child upon the street. Washington v. Davis, 249 N.C. 65, 105 S.E.2d 202 (1958).

The presence of children on or near the traveled portion of a highway, whom a driver sees or should see, places him under the duty to use due care to control the speed and movement of his vehicle and to keep a vigilant lookout to avoid injury. Anderson v. Smith, 29 N.C. App. 72, 223 S.E.2d 402 (1976).

The presence of children on or near a highway is a warning signal to a motorist, who must bear in mind that they have less capacity to shun danger than adults and are prone to act on impulse. Anderson v. Smith, 29 N.C. App. 72, 223 S.E.2d 402 (1976).

A motorist who sees, or by the exercise of reasonable care should see, children on or near the highway must recognize that children have less discretion than adults and may run out into the street in front of his approaching automobile unmindful of the danger. Therefore, proper care requires a motorist to maintain a vigilant lookout, to give a timely warning of his approach, and to drive at such speed and in such a manner that he can control his vehicle if a child, in obedience to a childish impulse, attempts to cross the street in front of his approaching automobile. Gupton v. McCombs, 74 N.C. App. 547, 328 S.E.2d 886, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

For case holding evidence sufficient to show noncompliance with subsection (e), see Register v. Gibbs, 233 N.C. 456, 64 S.E.2d 280 (1951).

Motorist Held Not Entitled to Sudden Emergency Instruction. — Motorist who observed a child standing at the side of the road but never sounded her horn to warn the child of her approach, failed to keep a vigilant lookout for the child and testified that she assumed that the child would wait for oncoming cars and her vehicle to pass before crossing the street was not entitled to sudden emergency instruction. Gupton v. McCombs, 74 N.C. App. 547, 328 S.E.2d 886, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

III. NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE.

Crossing a street without a right-of-way is not negligence per se. Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969).

And violations of this section do not constitute negligence per se. Clark v. Bodycombe, 289 N.C. 246, 221 S.E.2d 506 (1976).

It is unlawful for a pedestrian to cross a street between intersections at which traffic lights are maintained unless there is a marked crosswalk between the intersections at which he may cross and on which he has the right-of-way over vehicles, and his failure to observe the statutory requirements is evidence of negligence, but not negligence per se. Templeton v. Kelley, 216 N.C. 487, 5 S.E.2d 555 (1939). See also Templeton v. Kelley, 215 N.C. 577, 2 S.E.2d 696 (1939), modified on other grounds, 217 N.C. 164, 7 S.E.2d 380 (1940); Bass v. Roberson, 261 N.C. 125, 134 S.E.2d 157 (1964).

Evidence of a violation of this section does not constitute negligence or contributory negligence per se, but rather is some proof of negligence, to be considered with the rest of the evidence in the case. Troy v. Todd, 68 N.C. App. 63, 313 S.E.2d 896 (1984).

But Must Be Considered Along with Other Evidence. — Violation by a pedestrian of subsections (a), (b) and (e) of this section is not negligence per se, but is evidence to be considered along with other evidence upon the question of a pedestrian's negligence. Moore v. Bezalla, 241 N.C. 190, 84 S.E.2d 817 (1954); Simpson v. Curry, 237 N.C. 260, 74 S.E.2d 649 (1953).

A violation of subsection (e) of this section may not be considered negligence per se; the jury, if they find as a fact that subsection (e) of this section was violated, must consider the violation along with all other facts and circumstances and decide whether, when so considered, the person found guilty of such violation breached his common law and statutory duty of exercising ordinary care. Pope v. Deal, 39 N.C. App. 196, 249 S.E.2d 866 (1978), cert. denied, 296 N.C. 737, 254 S.E.2d 178 (1979).

Failure to yield the right-of-way as required under this section is not contributory negligence per se, but rather it is evidence of negligence to be considered with other evidence in the case in determining whether the actor is chargeable with negligence which proximately caused or contributed to his injury. Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965); Wagoner v. Butcher, 6 N.C. App. 221, 170 S.E.2d 151 (1969); Pompey v. Hyder, 9 N.C. App. 30, 175 S.E.2d 319 (1970); Dendy v. Watkins, 288 N.C. 447, 219 S.E.2d 214 (1975).

Failure of a pedestrian to yield the right-of-way as required by subsection (a) is not contributory negligence per se, but is evidence to be considered with other evidence in the case upon the issue. Citizens Nat'l Bank v. Phillips, 236 N.C. 470, 73 S.E.2d 323 (1952); Simpson v. Curry, 237 N.C. 260, 74 S.E.2d 649 (1953);

Goodson v. Williams, 237 N.C. 291, 74 S.E.2d 762 (1953); Landini v. Steelman, 243 N.C. 146, 90 S.E.2d 377 (1955); Gamble v. Sears, 252 N.C. 706, 114 S.E.2d 677 (1960); Brooks v. Boucher, 22 N.C. App. 676, 207 S.E.2d 282, cert. denied, 286 N.C. 211, 209 S.E.2d 319 (1974).

The failure of a pedestrian crossing a roadway at a point other than a crosswalk to yield the right-of-way to a motor vehicle is not contributory negligence per se; it is only evidence of negligence. Blake v. Mallard, 262 N.C. 62, 136 S.E.2d 214 (1964); Holloway v. Holloway, 262 N.C. 258, 136 S.E.2d 559 (1964); Price v. Miller, 271 N.C. 690, 157 S.E.2d 347 (1967); Oliver v. Powell, 47 N.C. App. 59, 266 S.E.2d 830 (1980).

The mere fact that a pedestrian attempts to cross a street at a point other than a crosswalk is not sufficient, standing alone, to support a finding of contributory negligence as a matter of law. Wanner v. Alsup, 265 N.C. 308, 144 S.E.2d 18 (1965); Lewis v. Dove, 39 N.C. App. 599, 251 S.E.2d 669, cert. denied, 297 N.C. 300, 254 S.E.2d 920 (1979).

Where the evidence disclosed that intestate was pushing his handcart on the right-hand side of the highway in violation of subsection (d) of this section and was struck from the rear by a vehicle traveling in the same direction, and plaintiff's evidence was to the effect that the operator of the vehicle was traveling at excessive speed and failed to keep a proper lookout, the fact that intestate was traveling on the wrong side of the road did not render him guilty of contributory negligence as a matter of law upon the evidence, since the operator of a vehicle is under the duty notwithstanding the provisions of subsection (d) to exercise due care to avoid colliding with any pedestrian upon the highway. Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948), commented on in 27 N.C.L. Rev. 274 (1949).

Although a violation of subsection (a) is not contributory negligence per se, a failure to yield the right-of-way to a motor vehicle may constitute contributory negligence as a matter of law. Meadows v. Lawrence, 75 N.C. App. 86, 330 S.E.2d 47 (1985), aff'd, 315 N.C. 383, 337 S.E.2d 851 (1986).

Failure to yield the right of way to traffic pursuant to this section does not constitute negligence per se, but is some evidence of negligence. Whitley v. Owens, 86 N.C. App. 180, 356 S.E.2d 815 (1987).

Summary Judgment Properly Granted as to Contributory Negligence of Injured Party. — Trial court properly granted summary judgment pursuant to G.S. 1A-1, N.C. R. Civ. P. 56, to defendants as to an injured party's contributory negligence in an automobile accident; the injured party was clearly in violation of G.S. 20-174 at the time of the accident, as he was walking on or crossing a highway outside of a marked cross-walk, was not wearing reflective clothing, and was under the influence of alcohol and drugs. Hofecker v. Casperson, 168 N.C. App. 341, 607 S.E.2d 664, 2005 N.C. App. LEXIS 251 (2005).

Jury to Determine Issue of Contributory Negligence. — It is to be left to the jury to consider a violation of this section as evidence of negligence along with the other evidence in determining whether or not a pedestrian contributed to his own injury and was, therefore, guilty of contributory negligence. Simpson v. Wood, 260 N.C. 157, 132 S.E.2d 369 (1963).

It is to be left to the jury to consider a violation of subsection (d) of this section as evidence of negligence along with other evidence in determining whether or not the plaintiff contributed to his own injury and was, therefore, guilty of contributory negligence. Clark v. Bodycombe, 289 N.C. 246, 221 S.E.2d 506 (1976).

Contributory Negligence Held Proper Issue for Jury. — The issue of contributory negligence was properly submitted to the jury in an action by a pedestrian for personal injuries sustained when he was struck by defendant's car where the evidence showed that plaintiff was crossing the roadway at an unmarked crossing in the path of an oncoming car which had the right-of-way. Maness v. Ingram, 29 N.C. App. 26, 222 S.E.2d 737 (1976).

Upon consideration of a motion for a directed verdict, where it appeared that plaintiff was proceeding along a dirt pathway beyond the curb on the north side of a street and that when she was confronted with an automobile blocking a driveway which traversed the path plaintiff left the dirt path and walked along a gutter between the driveway and the portion of the street upon which vehicles ordinarily traveled, but that plaintiff was never more than 12 inches from the north curb of the street, and that just before she reached the curb on the western side of the driveway she was struck by defendant's automobile, the evidence permitted diverse inferences as to whether plaintiff acted in a reasonable manner and whether her acts proximately caused her injuries; thus, the issue of contributory negligence should have been submitted to the jury. Clark v. Bodycombe, 289 N.C. 246, 221 S.E.2d 506 (1976).

Garbage truck driver who was not engaged in carrying or dumping garbage or any other duties of employment which would divert his attention and thus confer upon him different status from an ordinary pedestrian on the roadway, but was merely walking alongside the truck in order to reenter the cab and was free to keep a proper lookout and otherwise take precautions for his own safety, was under a duty not only to look, but to keep a lookout, to see traffic that could be seen, and to yield the right-of-way, and the question of his contributory negligence in being struck by a passing car was properly presented to the jury. Whitley v. Owens, 86 N.C. App. 180, 356 S.E.2d 815 (1987).

For cases finding pedestrians guilty of contributory negligence, see Miller v. Lewis & Holmes Motor Freight Corp., 218 N.C. 464, 11 S.E.2d 300 (1940); Garmon v. Thomas, 241 N.C. 412, 85 S.E.2d 589 (1955); Barbee v. Perry, 246 N.C. 538, 98 S.E.2d 794 (1957).

Pedestrian Crossing at Night Outside Crosswalk. — If the road is straight, visibility unobstructed, the weather clear, and the headlights of the vehicle in use, the failure of a pedestrian crossing a road at night outside a crosswalk to see and avoid a vehicle will consistently be deemed contributory negligence as a matter of law. Meadows v. Lawrence, 75 N.C. App. 86, 330 S.E.2d 47 (1985), aff'd, 315 N.C. 383, 337 S.E.2d 851 (1986).

Nonsuit Where Contributory Negligence Is Proximate Cause of Injury. — The court will nonsuit a plaintiff pedestrian on the ground of contributory negligence when all the evidence so clearly establishes his failure to yield the right-of-way as one of the proximate causes of his injuries that no other reasonable conclusion is possible. Blake v. Mallard, 262 N.C. 62, 136 S.E.2d 214 (1964); Price v. Miller, 271 N.C. 690, 157 S.E.2d 347 (1967); Foster v. Shearin, 28 N.C. App. 51, 220 S.E.2d 179 (1975); Oliver v. Powell, 47 N.C. App. 59, 266 S.E.2d 830 (1980).

Evidence Held to Warrant Nonsuit. — Evidence disclosing that plaintiff pedestrian, instead of crossing at an intersection where he had the right-of-way, elected to cross some 100 feet south of the intersection, and that he was struck by defendant motorist, who was traveling with his lights on some 25 miles per hour in a 35 mile per hour zone, warranted nonsuit, in the absence of evidence that plaintiff was oblivious to the danger or that defendant saw or in the exercise of reasonable care should have seen that plaintiff was not aware of the approaching danger. Jenkins v. Thomas, 260 N.C. 768, 133 S.E.2d 694 (1963).

Test on Defendants' Motion for Summary Judgment in Personal Injury Action. — In passing a defendants' motion for summary judgment in an action to recover damages incurred by plaintiff pedestrian when she was struck by defendants' car while crossing the highway at a point where there was neither a crosswalk nor an intersection, the evidence must be tested by the rule of the reasonably prudent man, in the light of the duties imposed upon both plaintiff and defendant by subsections (a) and (e) of this section. Ragland v. Moore, 299 N.C. 360, 261 S.E.2d 666 (1980).

Summary Judgment Not Warranted. — In an action to recover for personal injuries sustained by plaintiff jogger when he was struck by defendant's automobile, the trial court erred in entering summary judgment for defendants where there were issues of fact as to (1) whether one defendant was negligent in driving the automobile into plaintiff on the highway while visibility was clear, thereby failing to keep a proper lookout or to keep the vehicle under control; (2) whether plaintiff's negligence in violating subsection (d) of this section by not jogging on the left-hand side of the road was a proximate cause of his injury; and (3) whether plaintiff failed to keep a proper lookout when he saw the vehicle, took three or four more steps, and then started to cross the road in front of the vehicle. Parker v. Windborne, 50 N.C. App. 410, 273 S.E.2d 750, cert. denied, 302 N.C. 398, 279 S.E.2d 352 (1981).

Instruction Upheld. — An instruction that the violation of statutes regulating the operation of motor vehicles and the conduct of pedestrians on the highway would constitute negligence per se and would be actionable if it was the proximate cause of injury was without error when the instruction was applied solely to G.S. 20-146 and this section, prescribing that vehicles should be operated on the right-hand side of the highway and that warning should be given pedestrians. Williams v. Woodward, 218 N.C. 305, 10 S.E.2d 913 (1940).

Instructions Held Erroneous. — Where all the evidence tended to show that injured pedestrian had crossed the street in the middle of a block between intersections at which traffic-control signals were in operation, and there was no evidence that there was a marked crosswalk at the place, an instruction to the effect that the pedestrian had a right to cross in the middle of the block and that motorists were under a duty to do what was necessary for her protection constituted prejudicial error. State v. Call, 236 N.C. 333, 72 S.E.2d 752 (1952).

Where the evidence was conflicting as to whether plaintiff pedestrian was walking on left-hand or right-hand side of the highway, the court should have charged the jury on the various aspects of the evidence to the effect that if she was walking on her left-hand side of the highway it was her duty to yield the right-of-way to vehicles upon the roadway, and that if she was walking on her right-hand side she was in violation of subsections (a) and (d) of this section, and an instruction that the duty of a pedestrian to yield the right-of-way applies only to traffic approaching from the front when he is walking on his left side of the highway was in error. Spencer v. McDowell Motor Co., 236 N.C. 239, 72 S.E.2d 598 (1952).

Where the evidence disclosed that plaintiff's intestate was pushing a handcart on the right side of the highway and was struck from the rear by defendant's vehicle traveling in the same direction, and plaintiff contended that the handcart was a vehicle and that G.S. 20-146 and 20-149 applied, while defendant contended that intestate was a pedestrian and was required by subsection (d) of this section to push the handcart along the extreme left-hand side of the highway, an instruction failing to define intestate's status and failing to explain the law arising upon the evidence failed to meet the requirements of former G.S. 1-180. Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948).

Instruction Held Necessary. — In prosecution of defendant motorist for manslaughter for the deaths of two small boys who were struck by defendant's car as he was attempting to pass another vehicle traveling in the same direction, evidence that the children were walking on the hard surface when they were struck and that the preceding car speeded up as defendant attempted to pass it required the court to instruct the jury upon the conduct of the children in walking on the hard surface and the conduct of the other driver in increasing his speed, as bearing upon the question of whether defendant's negligence was a proximate cause of the deaths. State v. Harrington, 260 N.C. 663, 133 S.E.2d 452 (1963).

For case holding that failure to charge this section was not prejudicial to plaintiff where jury found that defendant was negligent, see Gathings v. Sehorn, 255 N.C. 503, 121 S.E.2d 873 (1961).

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

(a) No person shall willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Violation of this section is a Class 2 misdemeanor. (1965, c. 137; 1969, c. 1012; 1993 (Reg. Sess., 1994), c. 761, s. 17.)

Local Modification. — Ashe: 2008-78, s. 2.

Legal Periodicals. — For article dealing with legal problems in southern desegregation, see 43 N.C.L. Rev. 689 (1965).

CASE NOTES

Legislative Intent. — The legislative intent is to prohibit and punish those who willfully place themselves upon the streets and highways of the State in such manner as to impede the regular flow of traffic. State v. Spencer, 276 N.C. 535, 173 S.E.2d 765 (1970); State v. Frinks, 22 N.C. App. 584, 207 S.E.2d 380, appeal dismissed, 285 N.C. 761, 209 S.E.2d 285 (1974).

The legislature intended to make it unlawful for any person to impede the regular flow of traffic upon the streets and highways of the State by willfully placing his body thereon in either a standing, lying or sitting position. State v. Spencer, 276 N.C. 535, 173 S.E.2d 765 (1970); Self v. Dixon, 39 N.C. App. 679, 251 S.E.2d 661 (1979).

The punishment ceiling imposed by § 20-176(b) does not apply to this section. State v. Spencer, 276 N.C. 535, 173 S.E.2d 765 (1970).

Acts Condemned by Section. — A person may stand and walk, stand and strut, stand and run or stand still. All these acts are condemned by this section when done willfully in such a manner as to impede the regular flow of traffic upon a public street or highway. State v. Spencer, 276 N.C. 535, 173 S.E.2d 765 (1970); State v. Frinks, 22 N.C. App. 584, 207 S.E.2d 380, appeal dismissed, 285 N.C. 761, 209 S.E.2d 285 (1974).

Conduct Held Violative of Section. — Conduct of defendants in walking slowly back and forth across a public highway in such a manner as to cause traffic to be blocked in both directions was within the purview of this section, and the trial court correctly charged that "if the defendants were on the highway and standing, whether they were standing still or walking is of no consequence," since standing is an integral and necessary part of the act of walking. State v. Spencer, 7 N.C. App. 282, 172 S.E.2d 280, modified and aff'd, 276 N.C. 535, 173 S.E.2d 765 (1970).

Evidence Held Insufficient to Show Violation of Section. — Where the evidence showed that plaintiff in a personal injury action stood "half on and half off" the pavement for the purpose of picking up a rag dropped by her niece, and that she saw defendant's approaching automobile but was unable to get off the pavement before being struck, there was not sufficient evidence tending to show that the plaintiff willfully placed her body on the street to impede or block traffic in violation of this section. Self v. Dixon, 39 N.C. App. 679, 251 S.E.2d 661 (1979).

Instruction Held Not Prejudicial. — Where trial court read the warrant, which charged defendants with "feloniously" sitting, in defining a violation of this section to the jury, such charge was not prejudicial when the charge was considered in its entirety. State v. Frinks, 22 N.C. App. 584, 207 S.E.2d 380, appeal dismissed, 285 N.C. 761, 209 S.E.2d 285 (1974).

Instruction Improper. — Plaintiff who placed himself in the road while helping a stranded motorist to push his car off the highway did not intentionally impede traffic; thus, giving a jury instruction based on this section on the issue of plaintiff's contributory negligence was error. Haas v. Clayton, 125 N.C. App. 200, 479 S.E.2d 805 (1997).

Applied in In re Burruss, 275 N.C. 517, 169 S.E.2d 879 (1969); In re Burruss, 4 N.C. App. 523, 167 S.E.2d 454 (1969); In re Shelton, 5 N.C. App. 487, 168 S.E.2d 695 (1969); Sizemore v. Raxter, 73 N.C. App. 531, 327 S.E.2d 258 (1985).

Cited in State v. Gibbs, 8 N.C. App. 339, 174 S.E.2d 119 (1970); State v. Evans, 8 N.C. App. 469, 174 S.E.2d 680 (1970); McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971); State v. Godwin, 13 N.C. App. 700, 187 S.E.2d 400 (1972); State v. Murrell, 18 N.C. App. 327, 196 S.E.2d 606 (1973).

§ 20-174.2. Local ordinances; pedestrians gathering, picketing, or protesting on roads or highways.

(a) A municipality or a county may adopt an ordinance regulating the time, place, and manner of gatherings, picket lines, or protests by pedestrians that occur on State roadways and State highways.

(b) Nothing in this section shall permit a municipality or a county to impose restrictions or prohibitions on the activities of any of the following persons who are engaged in construction or maintenance, or in making traffic or engineering surveys:

(1) Licensees, employees, or contractors of the Department of Transportation.

(2) Licensees, employees, or contractors of a municipality. (2007-360, s. 6.)

§ 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.

(a) No person shall stand in any portion of the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle.

(b) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any State highway or street, excluding sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets: Provided that the provisions of this subsection shall not apply to licensees, employees or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

(c) Repealed by Session Laws 1973, c. 1330, s. 39.

(d) Local governments may enact ordinances restricting or prohibiting a person from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. No local government may enact or enforce any ordinance that prohibits engaging in the distribution of newspapers on the non-traveled portion of any street or highway except when those distribution activities impede the normal movement of traffic on the street or highway. This subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys except as provided in subsection (e) of this section.

(e) A local government shall have the authority to grant authorization for a person to stand in, on, or near a street or State roadway, within the local government's municipal corporate limits, to solicit a charitable contribution if the requirements of this subsection are met.

A person seeking authorization under this subsection to solicit charitable contributions shall file a written application with the local government. This application shall be filed not later than seven days before the date the solicitation event is to occur. If there are multiple events or one event occurring on more than one day, each event shall be subject to the application and permit requirements of this subsection for each day the event is to be held, to include the application fee.

The application must include:

(1) The date and time when the solicitation is to occur;

(2) Each location at which the solicitation is to occur; and

(3) The number of solicitors to be involved in the solicitation at each location.

This subsection does not prohibit a local government from charging a fee for a permit, but in no case shall the fee be greater than twenty-five dollars ($25.00) per day per event.

The applicant shall also furnish to the local government advance proof of liability insurance in the amount of at least two million dollars ($2,000,000) to cover damages that may arise from the solicitation. The insurance coverage must provide coverage for claims against any solicitor and agree to hold the local government harmless.

A local government, by acting under this section, does not waive, or limit, any immunity or create any new liability for the local government. The issuance of an authorization under this section and the conducting of the solicitation authorized are not considered governmental functions of the local government.

In the event the solicitation event or the solicitors shall create a nuisance, delay traffic, create threatening or hostile situations, any law enforcement officer with proper jurisdiction may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2 misdemeanor. (1937, c. 407, s. 136; 1965, c. 673; 1973, c. 507, s. 5; c. 1330, s. 39; 1977, c. 464, s. 34; 2005-310, s. 1; 2006-250, ss. 7(a), 7(b); 2008-223, s. 1.)

Local Modification. — City of Burlington: 2005-30, s. 1; city of Durham: 2007-113, ss. 1, 2.

Effect of Amendments. — Session Laws 2008-223, s. 1, effective August 17, 2008, added the second sentence in subsection (d).

CASE NOTES

Municipal Ordinance Not In Conflict With Section. — City produced evidence that soliciting in the roadways and on the rights-of-way amongst traffic was a dangerous activity; the city's expert opinion evidence was uncontradicted. That Burlington, N.C., Ordinance 08-19 was designed to protect the public interest was also evidenced by the fact the ordinance tracked G.S. 20-175(d) which authorized local governments to pass such ordinances to restrict solicitations on public roadways. Times-News Publ'g Co. v. City of Burlington, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 56451 (M.D.N.C. June 30, 2008).

Applied in Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983).

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Municipal Ordinance in Conflict with Section. — A municipal ordinance which authorized the sale of newspapers and merchandise at intersectional traffic islands was in conflict with this section, to the extent that the ordinance purported to authorize acts resulting in the impeding of the normal flow of traffic on the public highways. See opinion of Attorney General to Mr. J.M. Lynch, P.E., State Traffic Engineer, North Carolina Department of

Transportation, 59 N.C.A.G. 45 (1989).

Acts Not Constituting Violation of Section. — Standing or loitering on the main traveled portion of the highway and soliciting employment, business or contributions from the driver or occupant of a motor vehicle does not constitute a violation of this section if the acts do not result in impeding the normal movement of traffic. See opinion of Attorney General to Mr. Carl V. Venters, 41 N.C.A.G. 528 (1971).

Part 11A. Blind Pedestrians — White Canes or Guide Dogs.

§ 20-175.1. Public use of white canes by other than blind persons prohibited.

It shall be unlawful for any person, except one who is wholly or partially blind, to carry or use on any street or highway, or in any other public place, a cane or walking stick which is white in color or white tipped with red. (1949, c. 324, s. 1.)

§ 20-175.2. Right-of-way at crossings, intersections and traffic-control signal points; white cane or guide dog to serve as signal for the blind.

At any street, road or highway crossing or intersection, where the movement of traffic is not regulated by a traffic officer or by traffic-control signals, any blind or partially blind pedestrian shall be entitled to the right-of-way at such crossing or intersection, if such blind or partially blind pedestrian shall extend before him at arm's length a cane white in color or white tipped with red, or if such person is accompanied by a guide dog. Upon receiving such a signal, all vehicles at or approaching such intersection or crossing shall come to a full stop, leaving a clear lane through which such pedestrian may pass, and such vehicle shall remain stationary until such blind or partially blind pedestrian has completed the passage of such crossing or intersection. At any street, road or highway crossing or intersection, where the movement of traffic is regulated by traffic-control signals, blind or partially blind pedestrians shall be entitled to the right-of-way if such person having such cane or accompanied by a guide dog shall be partly across such crossing or intersection at the time the traffic-control signals change, and all vehicles shall stop and remain stationary until such pedestrian has completed passage across the intersection or crossing. (1949, c. 324, s. 2.)

§ 20-175.3. Rights and privileges of blind persons without white cane or guide dog.

Nothing contained in this Part shall be construed to deprive any blind or partially blind person not carrying a cane white in color or white tipped with red, or being accompanied by a guide dog, of any of the rights and privileges conferred by law upon pedestrians crossing streets and highways, nor shall the failure of such blind or partially blind person to carry a cane white in color or white tipped with red, or to be accompanied by a guide dog, upon the streets, roads, highways or sidewalks of this State, be held to constitute or be evidence of contributory negligence by virtue of this Part. (1949, c. 324, s. 3.)

§ 20-175.4: Repealed by Session Laws 1973, c. 1330, s. 39.

Part 11B. Pedestrian Rights and Duties of Persons with a Mobility Impairment.

§ 20-175.5. Use of motorized wheelchairs or similar vehicles not exceeding 1000 pounds gross weight.

While a person with a mobility impairment as defined in G.S. 20-37.5 operates a motorized wheelchair or similar vehicle not exceeding 1000 pounds gross weight in order to provide that person with the mobility of a pedestrian, that person is subject to all the laws, ordinances, regulations, rights and responsibilities which would otherwise apply to a pedestrian, but is not subject to Part 10 of this Article or any other law, ordinance or regulation otherwise applicable to motor vehicles. (1991, c. 206, s. 1.)

Part 11C. Electric Personal Assistive Mobility Devices.

§ 20-175.6. Electric personal assistive mobility devices.

(a) Electric Personal Assistive Mobility Device. — As defined in G.S. 20-4.01(7a).

(b) Exempt From Registration. — As provided in G.S. 20-51.

(c) Use of Device. — An electric personal assistive mobility device may be operated on public highways with posted speeds of 25 miles per hour or less, sidewalks, and bicycle paths. A person operating an electric personal assistive mobility device on a sidewalk, roadway, or bicycle path shall yield the right-of-way to pedestrians and other human-powered devices. A person operating an electric personal assistive mobility device shall have all rights and duties of a pedestrian, including the rights and duties set forth in Part 11 of this Article.

(d) Municipal Regulation. — For the purpose of assuring the safety of persons using highways and sidewalks, municipalities having jurisdiction over public streets, sidewalks, alleys, bridges, and other ways of public passage may by ordinance regulate the time, place, and manner of the operation of electric personal assistive mobility devices, but shall not prohibit their use. (2002-98, s. 5.)

Cross References. — As to definition of electric personal assistive mobility device, see G.S. 20-4.01. As to exemption of electric personal assistive mobility device from registration and title under the motor vehicle laws, see G.S. 20-51.

Part 12. Sentencing; Penalties.

§ 20-176. Penalty for misdemeanor or infraction.

(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. Violation of the remaining Parts of this Article is a misdemeanor unless the violation is specifically declared by law to be an infraction or a felony.

(b) Unless a specific penalty is otherwise provided by law, a person found responsible for an infraction contained in this Article may be ordered to pay a penalty of not more than one hundred dollars ($100.00).

(c) Unless a specific penalty is otherwise provided by law, a person convicted of a misdemeanor contained in this Article is guilty of a Class 2 misdemeanor. A punishment is specific for purposes of this subsection if it contains a quantitative limit on the term of imprisonment or the amount of fine a judge can impose.

(c1) Notwithstanding any other provision of law, no person convicted of a misdemeanor for the violation of any provision of this Chapter except G.S. 20-28(a) and (b), G.S. 20-141(j), G.S. 20-141.3(b) and (c), G.S. 20-141.4, or a second or subsequent conviction of G.S. 20-138.1 shall be imprisoned in the State prison system unless the person previously has been imprisoned in a local confinement facility, as defined by G.S. 153A-217(5), for a violation of this Chapter.

(d) For purposes of determining whether a violation of an offense contained in this Chapter constitutes negligence per se, crimes and infractions shall be treated identically. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255; 1967, c. 674, s. 3; 1969, c. 378, s. 3; 1973, c. 1330, s. 34; 1975, c. 644; 1985, c. 764, s. 20; 1985 (Reg. Sess., 1986), c. 852, ss. 7, 17; c. 1014, s. 202; 1993, c. 539, s. 379; 1994, Ex. Sess., c. 24, s. 14(c).)

Local Modification. — City of Charlotte: 2001-88.

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under corresponding provisions of former law.*

As to strict construction of penal provisions, see Security Fin. Co. v. Hendry, 189 N.C. 549, 127 S.E. 629 (1925); Carolina Disct. Corp. v. Landis Motor Co., 190 N.C. 157, 129 S.E. 414 (1925).

This section does not apply to the various sections where punishment is specified as fine or imprisonment or both in the discretion of the court with no maximum limitation being specified. State v. Spencer, 7 N.C. App. 282, 172 S.E.2d 280, modified and aff'd, 276 N.C. 535, 173 S.E.2d 765 (1970).

The punishment ceiling imposed by subsection (b) of this section does not apply to § 20-174.1. State v. Spencer, 276 N.C. 535, 173 S.E.2d 765 (1970).

The maximum punishment for a violation of §§ 20-63 or 20-111 would be that prescribed by subsection (b) of this section, namely, a fine of not more than $100.00 or imprisonment in the county or municipal jail for not more than 60 days or both such fine and imprisonment. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Violation of § 20-162 by parking within 25 feet from the intersection of curb lines at an intersection of highways within a municipality is a misdemeanor, notwithstanding invocation of the prima facie rule of evidence created by G.S. 20-162.1. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

Every person convicted of speeding in violation of § 20-141, where the speed is not in excess of 80 miles an hour, shall be punished by a fine of not more than $100.00 or by imprisonment in the county or municipal jail for not more than 60 days or by both such fine and imprisonment. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Driving Without Lights. — Subsection (b) of this section prescribes the punishment for driving a motor vehicle without lights during the period from half hour after sunset to a half hour before sunrise in violation of G.S. 20-129. State v. Eason, 242 N.C. 59, 86 S.E.2d 774 (1955).

Operating a motor vehicle on a public highway at night without lights is a violation of G.S. 20-129. Such violation is a misdemeanor under this section, and is negligence per se. Williamson v. Varner, 252 N.C. 446, 114 S.E.2d 92 (1960).

As to violations of the motor vehicle law as evidence of guilt of other crimes, see State v. McIver, 175 N.C. 761, 94 S.E. 682 (1917); State v. Gash, 177 N.C. 595, 99 S.E. 337 (1919); State v. Sudderth, 184 N.C. 753, 114 S.E. 828 (1922).

Where defendant had been charged in the district court with drunken driving under former § 20-138, but was convicted of the lesser included offense under former G.S. 20-140(c), the trial judge, on trial de novo in the superior court, erred in instructing the jury on reckless driving under G.S. 20-140(a) and should have instructed on former G.S. 20-140(c), since the superior court has no jurisdiction to try an accused for a specific misdemeanor on the warrant of an inferior court unless he is first tried and convicted and then appeals to the superior court from the sentence pronounced. State v. Robinson, 40 N.C. App. 514, 253 S.E.2d 311 (1979).

Allocation of Funds From a City's Red Light Camera Ordinance. — County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006), cert. denied, appeal dismissed, 361 N.C. 430, 648 S.E.2d 845 (2007).

Applied in State v. Daughtry, 236 N.C. 316, 72 S.E.2d 658 (1952); State v. Massey, 265 N.C. 579, 144 S.E.2d 649 (1965); State v. Craig, 21 N.C. App. 51, 203 S.E.2d 401 (1974); Kraemer v. Moore, 67 N.C. App. 505, 313 S.E.2d 610 (1984).

Cited in State v. Mickle, 194 N.C. 808, 140 S.E. 150 (1927); Lancaster v. B. & H. Coach Line, 198 N.C. 107, 150 S.E. 716 (1929); State v. Wooten, 228 N.C. 628, 46 S.E.2d 868 (1948); Hinson v. Dawson, 241 N.C. 714, 86 S.E.2d 585 (1955); State v. Baucom, 244 N.C. 61, 92 S.E.2d 426 (1956); McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, 248 N.C. 146, 102 S.E.2d 816 (1958); State v. Zimmerman, 7 N.C. App. 522, 173 S.E.2d 35 (1970); State v. Speights, 280 N.C. 137, 185 S.E.2d 152 (1971); State v. Murrell, 18 N.C. App. 327, 196 S.E.2d 606 (1973); State v. Hudson, 103 N.C. App. 708, 407 S.E.2d 583 (1991); Glenn-Robinson v. Acker, 140 N.C. App. 606, 538 S.E.2d 601, 2000 N.C. App. LEXIS 1258 (2000); State v. Smith, — N.C. App. —, 666 S.E.2d 191, 2008 N.C. App. LEXIS 1661 (2008).

§ 20-177. Penalty for felony.

Any person who shall be convicted of a violation of any of the provisions of this Article herein or by the laws of this State declared to constitute a felony shall, unless a different penalty is prescribed herein or by the laws of this State, be punished as a Class I felon. (1937, c. 407, s. 138; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14.)

§ 20-178. Penalty for bad check.

When any person, firm, or corporation shall tender to the Division any uncertified check for payment of any tax, fee or other obligation due by him under the provisions of this Article, and the bank upon which such check shall be drawn shall refuse to pay it on account of insufficient funds of the drawer on deposit in such bank, and such check shall be returned to the Division, an additional tax shall be imposed by the Division upon such person, firm or corporation, which additional tax shall be equal to ten percent (10%) of the tax or fee in payment of which such check was tendered: Provided, that in no case shall the additional tax be less than ten dollars ($10.00); provided, further, that no additional tax shall be imposed if, at the time such check was presented for payment, the drawer had on deposit in any bank of this State funds sufficient to pay such check and by inadvertence failed to draw the check upon such bank, or upon the proper account therein. The additional tax imposed by this section shall not be waived or diminished by the Division. (1937, c. 407, s. 139; 1953, c. 1144; 1975, c. 716, s. 5; 1981, c. 690, s. 24.)

§ 20-178.1. Payment and review of civil penalty imposed by Department of Crime Control and Public Safety.

(a) Procedure. — A person who is assessed a civil penalty under this Article by the Department of Crime Control and Public Safety must pay the penalty within 30 calendar days after the date the penalty was assessed or make a written request within this time limit to the Department for a Departmental review of the penalty. A person who does not submit a request for review within the required time waives the right to a review and hearing on the penalty.

(b) Department Review. — Any person who denies liability for a penalty imposed by the Department may request an informal review by the Secretary of the Department or the Secretary's designee. The request must be made in writing and must contain sufficient information for the Secretary, or the Secretary's designee, to determine the specific basis upon which liability is being challenged. Upon receiving a request for informal review, the Secretary, or the Secretary's designee, shall review the record and determine whether the penalty was assessed in error. If, after reviewing the record, the Secretary, or the Secretary's designee, determines that the assessment or a portion thereof was not issued in error, the penalty must be paid within 30 days of the notice of decision.

(c) Judicial Review. — Any person who is dissatisfied with the decision of the Secretary and who has paid the penalty in full within 30 days of the notice of decision, as required by subsection (b) of this section, may, within 60 days of the decision, bring an action for refund of the penalty against the Department in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed. The court shall review the Secretary's decision and shall make findings of fact and conclusions of law. The hearing shall be conducted by the court without a jury. In reviewing the case, the court shall not give deference to the prior decision of the Secretary. A superior court may award attorneys' fees to a prevailing plaintiff only upon a showing of bad faith on the part of the Department, and any order for attorneys' fees must be supported by findings of fact and conclusions of law.

(d) Interest. — Interest accrues on a penalty that is overdue. A penalty is overdue if it is not paid within the time required by this section. Interest is payable on a penalty assessed in error from the date the penalty was paid. The interest rate set in G.S. 105-241.21 applies to interest payable under this section.

(e) The clear proceeds of all civil penalties assessed by the Department pursuant to this Article, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed by the Department pursuant to this Article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2009-376, s. 2(a).)

Editor's Note. — Session Laws 2009-376, s. 17, made this section effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date.

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. — After a conviction under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor shall make all feasible efforts to secure the defendant's full record of traffic convictions, and shall present to the judge that record for consideration in the hearing. Upon

request of the defendant, the prosecutor shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. —

(1) Notice. — If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. — The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the jury. — If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury selection. — A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court.

(1) Defendant admits aggravating factor only. — If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant pleads guilty to the charge only. — If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. — At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
  a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
  b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
  c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

  Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. — The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. — The judge, or the jury in superior court, shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.15 or more within a relevant time after the driving. For purposes of this subdivision, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

(2) Especially reckless or dangerous driving.
(3) Negligent driving that led to a reportable accident.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. — The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
(6a) Completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system. The continuous alcohol monitoring system shall be of a type approved by the Department of Correction.
(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6), (6a), and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. — If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, the judge shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, the judge shall note in the judgment any factors found and the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level shall be imposed.

(f1) Aider and Abettor Punishment. — Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. — Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. — A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. — A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h1) The judge may impose, as a condition of probation for defendants subject to Level One or Level Two punishments, that the defendant abstain from alcohol consumption for a minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring system. The total cost to the defendant for the continuous alcohol monitoring system may not exceed one thousand dollars ($1,000). The defendant's abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type approved by the Department of Correction.

(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, the court shall not impose the use of a continuous alcohol monitoring system unless the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system.

(h3) Any fees or costs paid pursuant to subsections (h1) or (h2) of this section shall be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall be transmitted to the entity providing the continuous alcohol monitoring system.

(i) Level Three Punishment. — A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. — A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. — A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. — Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(*l*) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. — If the judgment requires the defendant to perform a specified number of hours of community service, a minimum of 24 hours must be ordered.

(o) Evidentiary Standards; Proof of Prior Convictions. — In the sentencing hearing, the State shall prove any grossly aggravating or aggravating factor beyond a reasonable doubt, and the defendant shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. — Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions.

(s) Method of Serving Sentence. — The judge in his discretion may order a term of imprisonment to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.

(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail,

a. The defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or

b. The defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

(t) Repealed by Session Laws 1995, c. 496, s. 2. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, ss. 1, 2; 1989, c. 548, ss. 1, 2; c. 691, ss. 1-3, 4.1; 1989 (Reg. Sess., 1990), c. 1031, ss. 1, 2; c. 1039, s. 6; 1991, c. 636, s. 19(b), (c); c. 726, ss. 20, 21; 1993, c. 285, s. 9; 1995, c. 191, s. 3; c. 496, ss. 2-7; c. 506, ss. 11-13; 1997-379, ss. 2.1-2.8; 1997-443, s. 19.26(c); 1998-182, ss. 25, 31-35; 2006-253, s. 23; 2007-165, ss. 2, 3; 2007-493, ss. 6, 20, 26; 2009-372, s. 14.)

Cross References. — As to Department of Corrections establishing regulations for continuous alcohol monitoring systems, see G.S. 15A-1343.3. For current provisions regarding limited driving privileges, see G.S. 20-179.3.

Editor's Note. — Session Laws 2006-253, s. 29, provides: "The North Carolina General Assembly requests that the Chief Justice of the North Carolina Supreme Court encourage the judges of this State to obtain continuing legal education on the laws of this State relating to driving while impaired offenses and related issues, and to promulgate any rules necessary to ensure that the judiciary receives necessary training and education on these laws."

Session Laws 2007-165, s. 9, provides in part: "Sections 1 through 5 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. Nothing in this act shall be construed to prohibit a court from either continuing or allowing the use of continuous alcohol monitoring systems as evidence of alcohol abstinence prior to the effective date of Sections 1 through 5."

Effect of Amendments. — Session Laws 2007-165, ss. 2 and 3, effective December 1, 2007, and applicable to offenses committed on or after that date, added subdivision (e)(6a); inserted "(6a)" following "(6)" in subdivision (e)(7); and added subsections (h1) through (h3). For applicability, see Editor's note.

Session Laws 2007-493, ss. 6 and 20, effective August 30, 2007, substituted "G.S. 20-138.2B" for "G.S. 20-138.3" in subsection (a), deleted "G.S. 20-138.3" following "G.S. 20-138.2B"; in subsection (c), in the second sentence, inserted "or whether a conviction exists under subdivision (d)(5) of this section," and made a related change; added subdivision (c)(1)c, and made a minor stylistic change; in subdivision (p)(3), deleted "or is paroled into a residential treatment program" at the end; and, in subdivision (s)(3), deleted "if" at the end of the introductory language.

Session Laws 2007-493, s. 26, effective December 1, 2007, and applicable to offenses committed on or after that date, in subdivision (d)(1), substituted "0.15" for "0.16" in the first sentence and added the last sentence.

Session Laws 2009-372, s. 14, effective December 1, 2009, and applicable to offenses committed on or after that date, rewrote subsection (n).

Legal Periodicals. — For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

For 1997 legislative survey, see 20 Campbell L. Rev. 417.

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under this section as it read prior to the 1983 amendment and the 1993 amendment, which reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

Bifurcated Procedure Constitutional. — The bifurcated procedure that the legislature has established for impaired driving cases, with the jury determining whether G.S. 20-138.1 has been violated and the judge determining the length of punishment required under this section, is constitutional. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Because the factors before the trial judge in determining sentencing are not elements of the offense, their consideration for purposes of sentencing is a function of the judge and is therefore not susceptible to constitutional challenge based upon either the right to a jury trial under U.S. Const., Amend. VI or N.C. Const., Art. I, § 24. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986), involving sentencing under this section for impaired driving.

The North Carolina legislature did not overstep the bounds of the Constitution in the sentencing scheme of this section. Field v. Sheriff of Wake County, 831 F.2d 530 (4th Cir. 1987).

In a sentencing hearing conducted after defendant pled guilty to driving while impaired the trial court did not violate the Constitution by finding that defendant had caused serious injury as a result of his impaired driving, one of the aggravating factors in this section. Field v. Sheriff of Wake County, 831 F.2d 530 (4th Cir. 1987).

This section relates only to punishment. State v. White, 246 N.C. 587, 99 S.E.2d 772 (1957).

As to applicability of former subdivision (b)(1) of this section to out-of-state convictions, see In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

Under § 20-24(c), a bond forfeiture is equivalent to a conviction. In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

Serious Injury to Another Not Element of Offense. — Whether the defendant seriously injured another person was not an element of the crime of driving while impaired; it was a sentencing factor that the General Assembly deemed to be important in punishing those convicted of driving while impaired. State v. Field, 75 N.C. App. 627, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Imposition of Minimum and Maximum Sentences Was Not Error. — Trial judge did not err in stating both a minimum and maximum sentence for driving while impaired as G.S. 20-179(i) on its face, provided for a sentencing range. State v. McQueen, 181 N.C. App. 417, 639 S.E.2d 131, 2007 N.C. App. LEXIS 154 (2007), cert. denied, appeal dismissed, 361 N.C. 365, 646 S.E.2d 535 (2007).

Meaning of "Gross Impairment". — "Gross impairment" is a high level of impairment, higher than that impairment which must be shown to prove the offense of DUI. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Effect of BAC on Determination of "Gross Impairment". — While the statutory blood alcohol concentration (BAC) of 0.20 (now 0.08) may provide a "bright line" for determining "gross impairment," the finding of a BAC of 0.20 clearly is not required for the court to make the finding of gross impairment. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Evidence was sufficient to allow the court to consider whether defendant was grossly impaired, where police officer testified that defendant drove erratically and did not keep his car in its lane of travel, was obviously unsteady on his feet, slurred his speech, had difficulty answering routine questions, and could not perform any of the four field sobriety tests satisfactorily; that defendant's blood alcohol concentration (BAC) was .14; and that he admitted to the officer that he was under the influence of alcohol. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Especially Reckless or Dangerous Driving. — The legislature wrote the aggravating factor "especially reckless or dangerous driving" in the disjunctive, intending that evidence of either especially reckless or especially dangerous driving was enough to support one aggravating factor. However, there would need to be at least one item of evidence not used to prove either an element of the offense or any other factor in aggravation to support each additional aggravating factor. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Impaired driving is in and of itself "reckless" and "dangerous." Therefore, to determine whether there was enough evidence to prove that defendant's driving was both "especially reckless" and "especially dangerous," the facts of a case must disclose excessive aspects of recklessness and dangerousness not normally present in the offense of impaired driving. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Grossly Aggravating Factor. — Trial court erred in sentencing defendant on his conviction for driving while impaired by finding that a grossly aggravating factor applied and permitted enhancement of his sentence for that offense; the law required that a grossly aggravating factor that was used to increase defendant's sentence beyond the presumptive range had to be submitted to a jury and found by the jury to exist beyond a reasonable doubt. State v. Cruz, 173 N.C. App. 689, 620 S.E.2d 251, 2005 N.C. App. LEXIS 2288 (2005).

Trial court did not err in allowing the State of North Carolina to present evidence of grossly aggravating factors regarding defendant's sentence for driving while impaired without having complied with the 10-day notice provisions of the amended G.S. 20-179(a1)(1) because the notice provision was not applicable at the time of defendant's offense. State v. Dalton, — N.C. App. —, 677 S.E.2d 208, 2009 N.C. App. LEXIS 659 (2009).

Falling Asleep While Driving Is Especially Dangerous. — While evidence that defendant fell asleep and ran off the road was not enough evidence to support both the especially dangerous and the especially reckless aggravating factors, falling asleep while driving is at least especially dangerous. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

"Especially Reckless" Driving Not Shown. — Where although the assistant district attorney stated that defendant had been charged with passing through a red light without stopping, there was no evidence before the court to support this assertion, the court erred in finding as an aggravating factor that defendant's driving had been especially reckless. State v. Lockwood, 78 N.C. App. 205, 336 S.E.2d 678 (1985).

The burden to prove a factor under this section is by the greater weight of the

evidence, similar to the preponderance standard used in the Fair Sentencing Act, G.S. 15A-1340.4. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Provision of this section specifically requiring the State "to prove any grossly aggravating or aggravating factor by the greater weight of the evidence" is synonymous with the "preponderance of the evidence" standard which has passed constitutional muster with the courts. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

The plain meaning of the term "substantially" used in subdivision (f)(1) of this section, may be found in Black's Law Dictionary 1281 (5th ed. 1979), which defines it as, "[e]ssentially; without material qualification; in the main; in substance; materially; in a substantial manner. About, actually, competently, and essentially." State v. Weaver, 91 N.C. App. 413, 371 S.E.2d 759 (1988).

Alcoholics Anonymous is not a "treatment program," it is, in fact, a support group for recovering alcoholics. State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

Level Three Punishment Held Not an Abuse of Discretion. — Where the trial judge found as factors to be considered in sentencing: (a) that no grossly aggravating factors were present; (b) that as an aggravating factor, defendant had at least one prior conviction of an impaired driving offense which occurred over seven years before the date of the present offense charged; and (c) as a factor in mitigation, that defendant had a safe driving record, having no convictions of any serious motor vehicle offense for which at least four points are assessed, or for which defendant's license was subject to revocation, within five years of the date of the present offense, and the judge then imposed a level three punishment as provided in subsection (i) of this section, the judge did not abuse his discretion. State v. Weaver, 91 N.C. App. 413, 371 S.E.2d 759 (1988).

Level Four Punishment Imposed if Mitigating and Aggravating Factors are Equal. — Only if mitigating factors are found to apply and to substantially outweigh aggravating factors will a defendant receive Level Five Punishment. If mitigating factors and aggravating factors are in equipoise, Level Four Punishment, which permits a maximum term of 120 days, is to be imposed. State v. Santon, 101 N.C. App. 710, 401 S.E.2d 117 (1991).

Sentence of 30 Days as Condition of Suspension in Imposing Level Four Punishment Was Error. — If the court had correctly found that a level four punishment should have been imposed, it erred in requiring the defendant to serve 30 days as part of the conditions of a suspended sentence, as subdivision (j)(1) limits the term of imprisonment to 48 hours. State v. MaGee, 75 N.C. App. 357, 330 S.E.2d 825 (1985).

The North Carolina legislature has accorded the trial court broad discretion in subsection (k) in sentencing a person convicted of driving under the influence, subject to one important restriction regarding punishment: initially the state trial court cannot imprison the defendant more than 24 hours. This mandatory restriction in a very real sense is the maximum sentence a state trial judge can impose under subsection (k), unless the defendant later violates a condition of probation. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

The "like punishment" clause of 18 U.S.C. § 13, the federal Assimilative Crimes Act, places the same restriction on a federal court that is implementing the Assimilative Crimes Act. Thus, the federal court, like its state counterpart, cannot imprison a defendant more than 24 hours, unless he violates probation, nor can the federal court impose a fine in excess of $100. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

Prior convictions are not an element of the offense of driving while impaired, but are now merely one of several factors relating to punishment. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

When Prior Conviction May Not Be Used. — Under this section, once the State has proven by the greater weight of the evidence a prior driving under the influence conviction, defendant has the burden of proving by the preponderance of the evidence that in the case of the prior conviction (1) he was indigent; (2) he had no counsel; and (3) he had not waived counsel. If defendant meets his burden on all three facts, then the prior conviction may not be used as a basis for imposing an active sentence. State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986).

Allegation of Prior Conviction. — As to necessity for allegation of prior conviction under this section as it read prior to the 1983 amendment, see Harrell v. Scheidt, 243 N.C. 735, 92 S.E.2d 182 (1956); State v. Owenby, 10 N.C. App. 170, 177 S.E.2d 749 (1970); State v. Williams, 21 N.C. App. 70, 203 S.E.2d 399 (1974).

Admissibility of Evidence of Prior Conviction. — Evidence that a defendant has been previously convicted of drunken driving (now impaired driving) is admissible in a prosecution charging defendant with a second offense, even though the defendant neither testifies as a witness nor offers evidence of good character. State v. Owenby, 10 N.C. App. 170, 177 S.E.2d 749 (1970).

Conviction of a Similar Offense in Another Jurisdiction. — Although the definitions of "impairment" under North Carolina and New York laws are not identical and the statutes do not "mirror" one another, they are "substantially equivalent"; consequently, the trial court did not err in determining that defendant's prior conviction under New York law was a grossly aggravating factor in sentencing him under North Carolina law. State v. Parisi, 135 N.C. App. 222, 519 S.E.2d 531 (1999).

Formal Rules of Evidence Not Applicable to Sentencing Hearing Under Subsection (o). — Evidence adduced by either party at trial may be used at the sentencing hearing, under subsection (o) of this section, and the formal rules of evidence do not apply. State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986).

But Statement by Counsel Is Not Evidence. — While the formal rules of evidence do not apply at a sentencing hearing under subsection (o) of this section, the statement by defendant's counsel that defendant was indigent at the time of his 1981 driving under the influence conviction was not evidence. State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986).

Judgment upon Ex Parte Request Held Abuse of Discretion. — Judge's execution judgments allowing limited driving privileges upon a mere ex parte request, where he made no effort nor conducted any inquiry to ascertain whether the facts recited in the judgments were true and whether he was lawfully entitled to enter the judgments, and did not give the State an opportunity to be heard, when in truth the judgments were supported neither in fact nor in law and were beyond the judge's jurisdiction to enter, constituted a gross abuse of important provisions of the motor vehicle statutes and amounted to conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In re Crutchfield, 289 N.C. 597, 223 S.E.2d 822 (1975).

License Suspensions Held Separate and Distinct Revocations. — Suspension of a license for refusal to submit to a chemical test at the time of an arrest for drunken driving (now impaired driving) and a suspension which results from a plea of guilty or a conviction of that charge are separate and distinct revocations. Vuncannon v. Garrett, 17 N.C. App. 440, 194 S.E.2d 364 (1973).

Sentencing Forms Need Not Be Signed at Time of Sentencing. — There is no requirement in the sentencing provisions of the Safe Roads Act requiring sentencing forms to be signed at the time of sentencing. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Harmless Error. — Error under *Blakely v. Washington*, 542 U.S. 296 (2004), of not submitting aggravating factors to the jury so that they could be found beyond a reasonable doubt, which occurred in sentencing defendant under G.S. 20-179, was harmless since the overwhelming and uncontroverted testimony was that defendant totaled the victim's car and that a passenger was bleeding from the face and was treated at the emergency room. State v. McQueen, 181 N.C. App. 417, 639 S.E.2d 131, 2007 N.C. App. LEXIS 154 (2007), cert. denied, appeal dismissed, 361 N.C. 365, 646 S.E.2d 535 (2007).

Although the trial court should have submitted the aggravating factor in G.S. 20-179(c)(2), providing that at the time of the offense, defendant was driving while defendant's license was revoked, as defined by G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a), the error was harmless beyond a reasonable doubt. Defendant's driving record, admitted by the State, showed that defendant's driver's license was indefinitely revoked due to an impaired driving conviction and that the license had not been reinstated, which meant that evidence of the aggravating factor was overwhelming and uncontroverted such that a sentence beyond the statutory maximum could be imposed. State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73, 2008 N.C. App. LEXIS 536 (2008).

Applied in State v. Blankenship, 229 N.C. 589, 50 S.E.2d 724 (1948); State v. Nall, 239 N.C. 60, 79 S.E.2d 354 (1953); State v. Broadway, 256 N.C. 608, 124 S.E.2d 568 (1962); State v. Morgan, 263 N.C. 400, 139 S.E.2d 708 (1965); State v. Gallamore, 6 N.C. App. 608, 170 S.E.2d 573 (1969); State v. Spencer, 276 N.C. 535, 173 S.E.2d 765 (1970); State v. Tuggle, 17 N.C. App. 329, 194 S.E.2d 50 (1973); In re Greene, 297 N.C. 305, 255 S.E.2d 142 (1979); State v. Daughtry, 61 N.C. App. 320, 300 S.E.2d 719 (1983); State v. Cooney, 72 N.C. App. 649, 325 S.E.2d 15 (1985); State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993); State v. Gregory, 154 N.C. App. 718, 572 S.E.2d 838, 2002 N.C. App. LEXIS 1534 (2002).

Cited in State v. Parker, 220 N.C. 416, 17 S.E.2d 475 (1941); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); State v. Cole, 241 N.C. 576, 86 S.E.2d 203 (1955); State v. Stone, 245 N.C. 42, 95 S.E.2d 77 (1956); State v. White, 246 N.C. 587, 99 S.E.2d 772 (1957); State v. Lee, 247 N.C. 230, 100 S.E.2d 372 (1957); State v. Green, 251 N.C. 141, 110 S.E.2d 805 (1959); State v. Ball, 255 N.C. 351, 121 S.E.2d 604 (1961); State v. Thompson, 257 N.C. 452, 126 S.E.2d 58 (1962); Brewer v. Garner, 264 N.C. 384, 141 S.E.2d 806 (1965); State v. Broome, 269 N.C. 661, 153 S.E.2d 384 (1967); State v. Morris, 275 N.C. 50, 165 S.E.2d 245 (1969); State v. Grant, 3 N.C. App. 586, 165 S.E.2d 505 (1969); State v. Owenby, 10 N.C. App. 170, 177 S.E.2d 749 (1970); Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971); State v. Michaels, 11 N.C. App. 110, 180 S.E.2d 442 (1971); State v. Brown, 13 N.C. App. 327, 185 S.E.2d 453

(1971); State v. Medlin, 15 N.C. App. 434, 190 S.E.2d 425 (1972); State v. Burris, 17 N.C. App. 710, 195 S.E.2d 345 (1973); State v. Hurley, 18 N.C. App. 285, 196 S.E.2d 542 (1973); Helms v. Powell, 32 N.C. App. 266, 231 S.E.2d 912 (1977); In re Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979); State v. McLawhorn, 43 N.C. App. 695, 260 S.E.2d 138 (1979); State v. Woodson, 49 N.C. App. 696, 272 S.E.2d 167 (1980); State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983); State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985); United States v. Kendrick, 636 F. Supp. 189 (E.D.N.C. 1986); State v. Barber, 93 N.C. App. 42, 376 S.E.2d 497 (1989); In re Inquiry Concerning Judge Tucker, 348 N.C. 677, 501 S.E.2d 67 (1998); State v. Jarman, 140 N.C. App. 198, 535 S.E.2d 875, 2000 N.C. App. LEXIS 1103 (2000); State v. Alexander, 359 N.C. 824, 616 S.E.2d 914, 2005 N.C. LEXIS 843 (2005); State v. Hurt, 361 N.C. 325, 643 S.E.2d 915, 2007 N.C. LEXIS 407 (2007).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions of the Attorney General cited below were issued prior to the 1983 amendment and the 1993 amendment to this section. The 1993 amendment reduced the blood alcohol content for driving while impaired and related offenses from 0.10 to 0.08.*

As to the 7 year limitation in former subdivision (b)(1), see opinion of Attorney General to Solicitor F. Ogden Parker, 41 N.C.A.G. 535 (1971); opinion of Attorney General to Mr. James W. Copeland, Jr., Assistant District Attorney, Eighth Judicial District, 50 N.C.A.G. 89 (1981).

Ten-Year Limitation in § 20-36 Applies Only to Department (Now Division) of Motor Vehicle Action. — See opinion of Attorney General to Honorable Robert A. Collier, Jr., 41 N.C.A.G. 322 (1971).

As to the granting, scope, modification and revocation of limited driving privileges under former subsection (b), see opinion of Attorney General to Mr. Robert C. Powell, Attorney at Law, 40 N.C.A.G. 401 (1969); opinion of Attorney General to Mr. John B. Whitley, District Prosecutor, Twenty-sixth Judicial District, 40 N.C.A.G. 409 (1969); the Honorable Walter W. Cohoon, Resident Judge, First Judicial District, 40 N.C.A.G. 410 (1969); opinion of Attorney General to Commissioner Joe W. Garrett, Department of Motor Vehicles, 40 N.C.A.G. 415 (1969); opinion of Attorney General to the Honorable John S. Gardner, District Court Judge, Sixteenth Judicial District, 40 N.C.A.G. 420 (1969); opinion of Attorney General to the Honorable Wm. Pope Barfield, Magistrate, Harnett County, 40 N.C.A.G. 407 (1970); opinion of Attorney General to Commissioner Joe W. Garrett, N.C. Department of Motor Vehicles, 40 N.C.A.G. 414 (1970); opinion of Attorney General to the Honorable Charles M. Johnson, Clerk of Superior Court, Montgomery County, 40 N.C.A.G. 418 (1970); opinion of Attorney General to Lt. O.H. Page, 41 N.C.A.G. 596 (1971); opinion of Attorney General to Mr. J. E. Holshouser, Sr., 41 N.C.A.G. 659 (1971); opinion of Attorney General to the Honorable J. Ray Braswell, 41 N.C.A.G. 706 (1971); opinion of Attorney General to Mr. James W. Hardison, Assistant District Attorney, 49 N.C.A.G. 119 (1980).

As to applicability of limited driving privilege provisions to offenses committed before July 2, 1969, see opinion of Attorney General to Representative G. Hunter Warlick, Hickory, 40 N.C.A.G. 412 (1969).

Electronic House Arrest Probation. — The mandatory minimum 14 day sentence for Level 1 and 7 days for Level 2 DWI defendants under subsections (g) and (h) may not be served through electronic house arrest probation. See opinion of Attorney General to Mr. Steve A. Balog, District Attorney, Prosecutorial District 15-A, 59 N.C.A.G. 62 (1989).

Fee for Rehabilitation Course. — Under this section prior to its amendment in 1983, the fee charged for an alcohol rehabilitation course could not be imposed by the court as part of the cost and collected by the clerk and distributed to the provider of the rehabilitation course. Opinion of Attorney General to Honorable George M. Britt, Chief District Judge, Seventh Judicial District, 48 N.C.A.G. 2 (1979).

§ 20-179.1. Presentence investigation of persons convicted of offense involving impaired driving.

When a person has been convicted of an offense involving impaired driving, the trial judge may request a presentence investigation to determine whether the person convicted would benefit from treatment for habitual use of alcohol or drugs. If the person convicted objects, no presentence investigation may be ordered, but the judge retains his power to order suitable treatment as a condition of probation, and must do so when required by statute. (1973, c. 612; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 29.)

§ **20-179.2:** Repealed by Session Laws 1995, c. 496, s. 8.

§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. — A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) His employment.
(2) The maintenance of his household.
(3) His education.
(4) His court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.

(b) Eligibility. —

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. — A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. A person whose license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(c1) Privilege Restrictions for High-Risk Drivers. — Notwithstanding any other provision of this section, any limited driving privilege issued to a person convicted of an impaired driving offense with an alcohol concentration of 0.15 or more at the time of the offense shall:

(1) Not become effective until at least 45 days after the final conviction under G.S. 20-138.1;
(2) Require the applicant to comply with the ignition interlock requirements of subsection (g5) of this section; and
(3) Restrict the applicant to driving only to and from the applicant's place of employment, the place the applicant is enrolled in school, any court ordered treatment or substance abuse education, and any ignition interlock service facility.

For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

(d) Application for and Scheduling of Subsequent Hearing. — The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the conviction for impaired driving was imposed.
(2) The senior regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.
(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. — A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(a)(2) or as a result of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. — Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". — Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. — In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. — If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. — A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1).

(g3) Ignition Interlock Allowed. — A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(g5) Ignition Interlock Required. — If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.15 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

(h) Other Mandatory and Permissive Conditions or Restrictions. — In all limited driving privileges the judge shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. — A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. — A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

(j1) Effect of Violation of Community Service Requirement. — Division of Community Corrections staff shall report significant violations of the terms of a probation judgment related to community service to the court that ordered the community service. The court shall then conduct a hearing to determine if there was a willful failure to comply. The hearing may be held in the district where the requirement was imposed, where the alleged violation occurred, or where the probationer resides. If the court determines that there was a willful failure to pay the prescribed fee or to complete the work as ordered within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until community service requirements have been met. In addition, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. — The clerk of court or the child support enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(*l*) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 78; 1989, c. 436, s. 6; 1994, Ex. Sess., c. 20, s. 3; 1995, c. 506, ss. 1, 2; c. 538, s. 2(h); 1995 (Reg. Sess., 1996), c. 756, s. 31; 1997-379, s. 5.6; 1999-406, ss. 4-6; 2000-155, ss. 7, 11-13; 2001-487, s. 55; 2007-182, s. 2; 2007-493, ss. 24, 29, 30; 2008-187, s. 36(c); 2009-372, s. 15.)

Editor's Note. — Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Session Laws 2009-372, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 2007-493, s. 24, effective August 30, 2007, deleted the former second and third sentences of subsection (c), which read: "If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation." For applicability provision, see Editor's note.

Session Laws 2007-493, ss. 29 and 30, effective December 1, 2007, and applicable to offenses committed on or after that date, added subsection (c1); and in subsection (g5), substituted "0.15" for "0.16," and added the second paragraph. For effective applicability provision, see Editor's note.

Session Laws 2008-187, s. 36(c), effective August 7, 2008, in the second paragraph of subsection (j), substituted "Department of Health and Human Services" for "Commission for Public Health" and substituted "Department" for "Commission."

Session Laws 2009-372, s. 15, effective December 1, 2009, and applicable to offenses committed on or after that date, added subsection (j1).

CASE NOTES

Violation of Separation of Powers. — North Carolina Division of Motor Vehicles violated the separation of powers clause in the North Carolina Constitution and violated a driver's right to due process when it unilaterally voided a district court's order limiting a driver's driving privilege; furthermore, by allowing the North Carolina Division of Motor Vehicles to, in essence, invalidate a properly entered court order, G.S. 20-179.3(k) violated the provisions requiring separation of powers contained in N.C. Const. art. I, § 6; N.C. Const. art. IV, § 1; and N.C. Const. art. IV, § 3. State v. Bowes, 159 N.C. App. 18, 583 S.E.2d 294, 2003 N.C. App. LEXIS 1439 (2003), cert. denied, 358 N.C. 156, 592 S.E.2d 698 (2004).

Discretion of Court in Granting Privilege. — The granting or denying of a limited driving privilege pursuant to subsection (a) of this section is for good cause shown, the decision resting in the sound discretion of the trial court. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Modification of Limited Driving Privilege Due to Inability Caused by Medical Condition. — Trial court did not have jurisdiction to exempt under G.S. 20-179.3(i) a driver who was seeking reinstatement of her driver's license after having it revoked for driving while impaired from complying with the ignition interlock device upon a showing that the driver could not use the ignition interlock device due to medical conditions substantiated by a doctor's note; the ignition interlock device provisions of G.S. 20-17.8 are mandatory and not subject to review. State v. Benbow, 169 N.C. App. 613, 610 S.E.2d 297, 2005 N.C. App. LEXIS 687 (2005).

Defendant has no entitlement to a limited driving privilege. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Probable Cause to Approach Defendant. — Officer who had specific knowledge that defendant's license had been revoked, that defendant held a limited driving privilege, and that he might have been violating his privilege by driving for a social purpose had a reasonable or founded suspicion base on articulable facts sufficient to justify his approach of defendant in a public place and ask to see a valid license and North Carolina permit. State v. Badgett, 82 N.C. App. 270, 346 S.E.2d 281 (1986).

Refusal to Allow Showing of Good Cause as Abuse of Discretion. — Trial court's refusal to allow defendant to show good cause for authorization of a limited driving privilege was an abuse of discretion, where defendant's official record of convictions for violations of motor vehicle laws and his driver's license record showed that he had no prior convictions for violations of this type, the court found no aggravating or grossly aggravating factors, and there was no showing of any subsequent violations of this nature. State v. Bailey, 93 N.C. App. 721, 379 S.E.2d 266 (1989).

Evidence Held Insufficient to Support Conviction Under Subsection (j). — State v. Cooney, 313 N.C. 594, 330 S.E.2d 206 (1985).

Cited in State v. Bartlett, 130 N.C. App. 79, 502 S.E.2d 53 (1998).

§ 20-179.4: Repealed by Session Laws 2009-372, s. 16, effective December 1, 2009, and applicable to offenses committed on or after that date.

Editor's Note. — The former section, Community service alternative punishment, responsibilities of the Department of Correction and fees, was enacted by Session Laws 1983, c. 761, s. 154, and amended by Session Laws 1983 (Reg. Sess., 1984), c. 1101, ss. 34, 35; 1987 (Reg. Sess., 1988), c. 1037, s. 82; 1989, c. 752, s. 109; 1995, c. 496, s. 9; 1997-234, s. 1; 2002-126, s. 29A.1(b); and 2004-199, s. 14.

Subsection (c) of the former section was further amended by Session Laws 2009-451, s. 19.26(b), as amended by Session Laws 2009-575, s. 16A, effective September 1, 2009, and applicable to persons ordered to perform community service on or after that date. The amendment increased the fee in subsection (c) to $225.00.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 20-180: Repealed by Session Laws 1973, c. 1330, s. 39.

§ 20-181. Penalty for failure to dim, etc., beams of headlamps.

Any person operating a motor vehicle on the highways of this State, who shall fail to shift, depress, deflect, tilt or dim the beams of the headlamps thereon whenever another vehicle is met on such highways or when following another vehicle at a distance of less than 200 feet, except when engaged in the act of overtaking and passing may, upon a determination of responsibility for the offense, be required to pay a penalty of not more than ten dollars ($10.00). (1939, c. 351, s. 3; 1955, c. 913, s. 1; 1987, c. 581, s. 5.)

Cross References. — As to conviction under this section not being a ground for revocation of a driver's license, see G.S. 20-18.

CASE NOTES

Cars are required to dim or slant their headlights in passing. Cummins v. Southern Fruit Co., 225 N.C. 625, 36 S.E.2d 11 (1945).

Right to Assume That Approaching Driver Will Dim Lights. — A motorist may assume that whenever he meets another motor vehicle traveling in the opposite direction, its driver will seasonably dim its headlights and not persist in projecting glaring light into his eyes. Chaffin v. Brame, 233 N.C. 377, 64 S.E.2d 276 (1951); United States v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953).

Applied in Keener v. Beal, 246 N.C. 247, 98 S.E.2d 19 (1957); Beasley v. Williams, 260 N.C. 561, 133 S.E.2d 227 (1963).

Cited in State v. Roberts, 82 N.C. App. 733, 348 S.E.2d 151 (1986).

§ 20-182: Repealed by Session Laws 1983, c. 912, s. 2.

§ 20-183. Duties and powers of law-enforcement officers; warning by local officers before stopping another vehicle on highway; warning tickets.

(a) It shall be the duty of the law-enforcement officers of the State and of each county, city, or other municipality to see that the provisions of this Article are enforced within their respective jurisdictions, and any such officer shall have the power to arrest on sight or upon warrant any person found violating the provisions of this Article. Such officers within their respective jurisdictions shall have the power to stop any motor vehicle upon the highways of the State for the purpose of determining whether the same is being operated in violation of any of the provisions of this Article. Provided, that when any county, city, or other municipal law-enforcement officer operating a motor vehicle overtakes another vehicle on the highways of the State, outside of the corporate limits of cities and towns, for the purpose of stopping the same or apprehending the driver thereof, for a violation of any of the provisions of this Article, he shall, before stopping such other vehicle, sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b).

(b) In addition to other duties and powers heretofore existing, all law-enforcement officers charged with the duty of enforcing the motor vehicle laws are authorized to issue warning tickets to motorists for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws. Each warning ticket issued shall contain information necessary to identify the offender, and shall be signed by the issuing officer. A copy of each warning ticket issued shall be delivered to the offender. Information from issued warning tickets shall be made available to the Drivers License Section of the Division of Motor Vehicles in a manner approved by the Commissioner but shall not be filed with or in any manner become a part of the offender's driving record. Warning tickets issued as well as the fact of issuance shall be privileged information and available only to authorized personnel of the Division for statistical and analytical purposes. (1937, c. 407, s. 143; 1961, c. 793; 1965, cc. 537, 999; 1975, c. 716, s. 5; 1998-149, s. 9.2.)

Legal Periodicals. — For survey of 1977 law on criminal procedure, see 56 N.C.L. Rev. 983 (1978).

For survey of 1978 law on criminal procedure, see 57 N.C.L. Rev. 1007 (1979).

For comment on the warrantless "search within a search" of containers in motor vehicles, see 17 Wake Forest L. Rev. 425 (1981).

CASE NOTES

Constitutionality. — The provisions of subsection (a) of this section, when balanced with the State's obligation to preserve order and enforce safety on its streets and highways, do not constitute such an encroachment on the individual's constitutional rights as to render the statute invalid. State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973), but see in Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

Powers of Highway Patrol Officers. — Members of the highway patrol have the power of peace officers for the purpose of enforcing the provisions of Article 3 of this Chapter. Patrol members may (i) arrest on sight any person found violating the provisions of Article 3 and (ii) stop any motor vehicle on a North Carolina highway to determine whether the vehicle is being operated in violation of any provision of Article 3. State v. Green, 103 N.C. App. 38, 404 S.E.2d 363 (1991).

Unrestrained Discretion to Stop Vehicle Violates Standards of Terry v. Ohio. — To permit vehicle stops in the unrestrained discretion of police officers is to allow such stops to be used as pretexts for investigations and to sanction stops which could not be justified under the standards set out in Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

State's Interests Do Not Justify Unreasonable Interference with Individual's Rights. — The decision in State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973), is not sufficiently sensitive to the need to accommodate the State's interest in enforcing its vehicle laws to the individual's right to be free from unreasonable interference with his travel on the highways. Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

The State has the power to enforce its vehicle safety and registration laws through some system of vehicle stops, but U.S. Const., Amend. IV also requires some accommodation of the individual interest in being left alone. Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

Stopping of Individual in Private Driveway Constituted Fourth Amendment "Seizure". — Where a patrolman, while not engaged in any patrol of the highway for purposes of observing traffic or making random license checks, spontaneously decided to stop petitioner while petitioner was in a private driveway, it would have been perfectly natural for the petitioner to assume that he was about to be subjected to a search or inquiry for some purpose other than a routine license check and that the officer meant to accost him for some purpose. There is no doubt that the officer's stop and demand was a "seizure" within the meaning of U.S. Const., Amend. IV. Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

Vehicle license checks must not be used as pretexts for harassment or for baseless investigations. Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

Power to Stop Vehicle Does Not Include Power to Search. — The power to stop a vehicle under this section does not include the power to search. The power to search incident to a warrantless arrest is clearly limited to situations where the officer, after stopping the vehicle, has found a person "violating the provisions of this Article." State v. Blackwelder, 34 N.C. App. 352, 238 S.E.2d 190 (1977).

Power to arrest does not necessarily include authority to search motor vehicle in absence of probable cause. State v. Braxton, 90 N.C. App. 204, 368 S.E.2d 56 (1988).

Persons stopped pursuant to this section may not be indiscriminately searched or arrested without probable cause in contravention of recognized constitutional principles. State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973).

No Power to Stop Vehicle to Determine If Driver Possessed Contraband Drugs. — Where there was no evidence that the officer stopped the vehicle operated by the defendant for the purpose of determining if he had violated a motor vehicle statute, but rather, the obvious purpose in stopping the vehicle was to determine if the defendant possessed contraband drugs, the officer had no right to remove the defendant from and search the vehicle. State v. Blackwelder, 34 N.C. App. 352, 238 S.E.2d 190 (1977).

Seizure of Contraband in Plain View Upheld. — Seizure of marijuana from defendants' car and arrest for its possession did not amount to an unconstitutional invasion of defendants' rights where officers discovered the marijuana in plain view after lawfully stopping defendants' vehicle to check driver's license and vehicle registration. State v. Garcia, 16 N.C. App. 344, 192 S.E.2d 2, cert. denied, 282 N.C. 427, 192 S.E.2d 837 (1972).

Conviction for Assaulting Patrolman Making Illegal Stop Upheld. — Where a patrolman, while not engaged in any patrol of the highway for purposes of observing traffic or making random license checks, spontaneously decided to stop petitioner while petitioner was in a private driveway, although petitioner would have had a meritorious defense to any prosecution based on failure to display his license, he was not entitled to invoke self-help against what was, at the time, an arguable lawful arrest, and his conviction for assaulting the highway patrolman would survive despite the finding that the officer's initial stop and demand were illegal as an unreasonable search and seizure under the U.S. Const., Amend. IV. Keziah v. Bostic, 452 F. Supp. 912 (W.D.N.C. 1978).

Authority Granted Law-Enforcement Officers Under Section. — This section authorizes State law-enforcement officers to stop any motor vehicle upon the highways of the State for the purpose of determining whether the same is being operated in violation of any of the provisions of the Motor Vehicles Code, including the provisions requiring registration of the vehicle, operation by a properly licensed driver, etc. United States v. Kelley, 462 F.2d 372 (4th Cir. 1972).

The power to stop a vehicle under this section is not dependent on probable cause to believe a violation has occurred. State v. Blackwelder, 34 N.C. App. 352, 238 S.E.2d 190 (1977).

Although when a police officer first stopped and approached truck he had no probable cause to believe that defendant had committed any offense, nevertheless the officer had authority to stop the truck under this section, and the existence of probable cause at the time the truck was stopped was not essential to the validity of subsequent arrest. State v. Dark, 22 N.C. App. 566, 207 S.E.2d 290, cert. denied, 285 N.C. 760, 209 S.E.2d 284 (1974).

In view of their authority under this section, the police were acting properly when they turned on their siren and light and requested a truck to stop even though they had no probable cause to believe that a crime had been committed. United States v. Kelley, 462 F.2d 372 (4th Cir. 1972).

Subdivisions (2) and (4) of § 20-49 are not irreconcilable with this section. State v. Allen, 15 N.C. App. 670, 190 S.E.2d 714 (1972), rev'd on other grounds, 282 N.C. 503, 194 S.E.2d 9 (1973).

Verdict of Not Guilty Not Tantamount to a Finding of No Reasonable Grounds for Arrest. — Verdict of not guilty of the misdemeanor for which defendant was arrested (drunken driving) was not tantamount to a finding that the arresting officer did not have reasonable grounds to believe that defendant had committed such offense in his presence and that defendant therefore could lawfully have resisted the arrest. State v. Jefferies, 17 N.C. App. 195, 193 S.E.2d 388 (1972), cert. denied, 282 N.C. 673, 194 S.E.2d 153 (1973).

Applied in State v. Eason, 242 N.C. 59, 86 S.E.2d 774 (1955); State v. White, 18 N.C. App. 31, 195 S.E.2d 576 (1973); State v. Keziah, 24 N.C. App. 298, 210 S.E.2d 436 (1974); State v. Davis, 66 N.C. App. 98, 311 S.E.2d 19 (1984).

Cited in State v. Mobley, 240 N.C. 476, 83 S.E.2d 100 (1954); State v. Cole, 241 N.C. 576, 86 S.E.2d 203 (1955); Lowe v. Department of Motor Vehicles, 244 N.C. 353, 93 S.E.2d 448 (1956); State v. Borland, 21 N.C. App. 559, 205 S.E.2d 340 (1974); State v. Bridges, 35 N.C. App. 81, 239 S.E.2d 856 (1978); State v. McClendon, 350 N.C. 630, 517 S.E.2d 128 (1999); State v. Washington, — N.C. App. —, 668 S.E.2d 622, 2008 N.C. App. LEXIS 2019 (2008).

ARTICLE 3A.

Safety and Emissions Inspection Program.

Part 1. Safe Use of Streets and Highways.

§ 20-183.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 3.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 2, effective October 1, 1994, substituted "Safety and Emissions Inspection Program" for "Motor Vehicle Law of 1947" as the heading for Article 3A.

Part 2. Safety and Emissions Inspections of Certain Vehicles.

§ 20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.

(a) Safety. — A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.

(2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.

(3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.

(a1) Safety Inspection Exceptions. — The following vehicles shall not be subject to a safety inspection pursuant to this Article:

(1) Historic vehicles, as defined in G.S. 20-79.4(b)(63).

(2) Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and G.S. 115C-248.

(b) Emissions. — A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection.

(2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.

(3) It is a 1996 or later model.

(4) Repealed by Session Laws 1999-328, s. 3.11, effective July 21, 1999.

(5) It meets any of the following descriptions:

a. It is required to be registered in an emissions county.

b. It is part of a fleet that is operated primarily in an emissions county.

c. It is offered for rent in an emissions county.

d. It is a used vehicle offered for sale by a dealer in an emissions county.

e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.

f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.

(6) It is not licensed at the farmer rate under G.S. 20-88(b).

(7) It is not a new motor vehicle, as defined in G.S. 20-286(10)a. and has been a used motor vehicle, as defined in G.S. 20-286(10)b., for 12 months or more. However, a motor vehicle that has been leased or rented, or offered for lease or rent, is subject to an emissions inspection when it either:

a. Has been leased or rented, or offered for lease or rent, for 12 months or more.

b. Is sold to a consumer-purchaser.

(8) It is not a privately owned, nonfleet motor home or house car, as defined in G.S. 20-4.01(27)d2., that is built on a single chassis, has a gross vehicle weight of more than 10,000 pounds, and is designed primarily for recreational use.

(c) Definitions. — The following definitions apply in this Part:

(1) Electronic inspection authorization. — An inspection authorization that is generated electronically through the electronic accounting system that creates a unique nonduplicating authorization number assigned to the vehicle's inspection receipt upon successful passage of an inspection. The term "electronic inspection authorization" shall include the term "inspection sticker" during the transition period to use of electronic inspection authorizations.

(2) Emissions county. — A county listed in G.S. 143-215.107A(c) or designated by the Environmental Management Commission pursuant to G.S. 143-215.107A(d) and certified to the Commissioner of Motor Vehicles as a county in which the implementation of a motor vehicle emissions inspection program will improve ambient air quality.

(3) Federal installation. — An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency. (1965, c. 734, s. 1; 1967, c. 692, s. 1; 1969, c. 179, s. 2; cc. 219, 386; 1973, c. 679, s. 2; 1975, c. 683; c. 716, s. 5; 1979, c. 77; 1989, c. 467; 1991, c. 394, s. 1; c. 761, s. 7; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 10; 1997-29, s. 12; 1999-328, s. 3.11; 2000-134, ss. 7, 7.1, 9, 11; 2001-504, ss. 4, 5, 6, 10; 2004-167, s. 10; 2004-199, s. 59; 2006-255, s. 1; 2007-503, s. 2; 2008-172, s. 1; 2009-570, s. 33.)

Editor's Note. — Session Laws 1999-328, s. 5.1 provides that the act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 2, effective October 1, 2008, and applicable to offenses committed on or after that date, added subdivision (c)(1) and redesignated former subdivisions (c)(1) and (c)(2) as present subdivisions (c)(2) and (c)(3).

Session Laws 2008-172, s. 1, effective August 4, 2008, rewrote subsection (a1).

Session Laws 2009-570, s. 33, effective August 28, 2009, substituted "G.S. 115C-248" for "115C-248(a)" at the end of subdivision (a1)(2).

CASE NOTES

Sale of Uninspected Vehicle by Dealer Is Negligence Per Se. — The retail sale of an automobile by a dealer, without first having the official inspection required by this statute, is negligence per se. This is the general rule as to statutes enacted for the safety and protection of the public. In such cases, the only remaining question is whether such negligence was a proximate cause of the injury for which recovery is sought. Anderson v. Robinson, 8 N.C. App. 224, 174 S.E.2d 45 (1970).

Cited in State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968).

§ 20-183.3. Scope of safety inspection and emissions inspection.

(a) Safety. — A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

(1) Brakes, as required by G.S. 20-124.

(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.

(3) Horn, as required by G.S. 20-125(a).

(4) Steering mechanism, as required by G.S. 20-123.1.

(5) Windows and windshield wipers, as required by G.S. 20-127. To determine if a vehicle window meets the window tinting restrictions, a safety inspection mechanic must first determine, based on use of an automotive film check card or knowledge of window tinting techniques, if after-factory tint has been applied to the window. If after-factory tint has been applied, the mechanic must use a light meter approved by the Commissioner to determine if the window meets the window tinting restrictions.

(6) Directional signals, as required by G.S. 20-125.1.

(7) Tires, as required by G.S. 20-122.1.

(8) Mirrors, as required by G.S. 20-126.

(9) Exhaust system and emissions control devices, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emissions control devices is included in the emissions inspection rather than the safety inspection.

(b) Repealed by Laws 2000-134, s. 12, effective January 1, 2006.

(b1) Emissions. — An emissions inspection of a motor vehicle consists of a visual inspection of the vehicle's emissions control devices to determine if the devices are present, are properly connected, and are the correct type for the vehicle and an analysis of data provided by the on-board diagnostic (OBD) equipment installed by the vehicle manufacturer to identify any deterioration or malfunction in the operation of the vehicle that violates standards for the model year of the vehicle set by the Environmental Management Commission. To pass an emissions inspection a vehicle must pass both the visual inspection and the OBD analysis. When an emissions inspection is performed on a vehicle, a safety inspection must be performed on the vehicle as well.

(c) Reinspection After Failure. — The scope of a reinspection of a vehicle that has been repaired after failing an inspection is the same as the original inspection unless the vehicle is presented for reinspection within 60 days of failing the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was a safety inspection, the reinspection is limited to an inspection of the equipment that failed the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was an emissions inspection, the reinspection is limited to the portion of the inspection the vehicle failed and any other portion of the inspection that would be affected by repairs made to correct the failure. (1965, c. 734, s. 1; 1969, c. 378, s. 2; 1971, c. 455, s. 2; c. 478, ss. 1, 2; 1979, 2nd Sess., c. 1180, s. 3; 1981 (Reg. Sess., 1982), c. 1261, s. 1; 1989, c. 391, s. 2; 1991, c. 654, s. 2; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 2; 2000-134, ss. 8, 10, 12; 2001-504, s. 7; 2007-364, s. 1.)

Effect of Amendments. — Session Laws 2007-364, s. 1, effective January 1, 2009, substituted "60 days" for "30 days" in the first sentence of subsection (c).

CASE NOTES

Visual Inspection Required. — Suspension of a vehicle inspection facility's equipment inspection license was warranted where the facility failed to visually inspect a truck's exhaust emission system and determine that it did not have a catalytic converter, although the truck passed minimum exhaust emission requirements. Darryl Burke Chevrolet, Inc. v. Aikens, 131 N.C. App. 31, 505 S.E.2d 581 (1998), aff'd, 350 N.C. 83, 511 S.E.2d 639 (1999).

Cited in Anderson v. Robinson, 8 N.C. App. 224, 174 S.E.2d 45 (1970).

§ 20-183.4. License required to perform safety inspection; qualifications for license.

(a) License Required. — A safety inspection must be performed by one of the following methods:

(1) At a station that has a safety inspection station license issued by the Division and by a mechanic who is employed by the station and has a safety inspection mechanic license issued by the Division.

(2) At a place of business of a person who has a safety self-inspector license issued by the Division and by an individual who has a safety inspection mechanic license issued by the Division.

(b) Station Qualifications. — An applicant for a license as a safety inspection station must meet all of the following requirements:

(1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection. A place of business designated in a station license that has been suspended or revoked cannot be the designated place for any other license applicant during the period of the suspension or revocation, unless the Division finds that operation of the place of business as an inspection station during this period by the license applicant would not defeat the purpose of the suspension or revocation because the license applicant has no connection with the person whose license was suspended or revoked or because of another reason. A finding made by the Division under this subdivision must be set out in a written statement that includes the finding and the reason for the finding.

(2) Regularly employ at least one mechanic who has a safety inspection mechanic license.

(3) Designate the individual who will be responsible for the day-to-day operation of the station. The individual designated must be of good character and have a reputation for honesty.

(4) Have equipment and software approved by the Division to transfer information on safety inspections to the Division by electronic means. During the initial implementation of the electronic inspection process, the vendor selected by the Division shall provide the equipment and software at no cost to a station that holds a license on October 1, 2008.

(c) Mechanic Qualifications. — An applicant for a license as a safety inspection mechanic must meet all of the following requirements:

(1) Have successfully completed an eight-hour course approved by the Division that teaches students about the safety equipment a motor vehicle is required to have to pass a safety inspection and how to conduct a safety inspection using equipment to electronically transmit the vehicle information and inspection results.

(2) Have a drivers license.

(3) Be of good character and have a reputation for honesty.

(d) Self-Inspector Qualifications. — An applicant for a license as a safety self-inspector must meet all of the following requirements:

(1) Operate a fleet of at least 10 vehicles that are subject to a safety inspection.

(2) Regularly employ or contract with an individual who has a safety inspection mechanic license and who will perform a safety inspection on the vehicles that are part of the self-inspector's fleet. (1965, c. 734, s. 1; 1967, c. 692, s. 2; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 1; 2007-503, s. 3; 2008-190, s. 2.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 3, effective October 1, 2008, and applicable to offenses committed on or after that date, added subdivision (b)(4); and added "using equipment to electronically transmit the vehicle information and inspection results" at the end of subdivision (c)(1).

Session Laws 2008-190, s. 2, effective October 1, 2008, inserted "approved by the Division" in the first sentence of subdivision (b)(4).

§ 20-183.4A. License required to perform emissions inspection; qualifications for license.

(a) License Required. — An emissions inspection must be performed by one of the following methods:

(1) At a station that has an emissions inspection station license issued by the Division and by a mechanic who is employed by the station and has an emissions inspection mechanic license issued by the Division.

(2) At a place of business of a person who has an emissions self-inspector license issued by the Division and by an individual who has an emissions inspection mechanic license.

(b) Station Qualifications. — An applicant for a license as an emissions inspection station must meet all of the following requirements:

(1) Have a license as a safety inspection station.

(2) Repealed by Laws 2000-134, s. 15, effective January 1, 2006.

(2a) Have equipment to analyze data provided by the on-board diagnostic (OBD) equipment approved by the Environmental Management Commission.

(3) Have equipment and software to transfer information on emissions inspections to the Division by electronic means. During the initial implementation of the electronic inspection process, the vendor selected by the Division shall provide the software at no cost to a station that holds a license on October 1, 2008.

(4) Regularly employ at least one mechanic who has an emissions inspection mechanic license.

(c) Mechanic Qualifications. — An applicant for a license as an emissions inspection mechanic must meet all of the following requirements:

(1) Have a license as a safety inspection mechanic.

(2) Repealed by Laws 2000-134, s. 15, effective January 1, 2006.

(2a) Have successfully completed an eight-hour course approved by the Division that teaches students about the causes and effects of the air pollution problem, the purpose of the emissions inspection program, the vehicle emission standards established by the United States Environmental Protection Agency, the emission control devices on vehicles, how to conduct an emissions inspection using equipment to analyze data provided by the on-board diagnostic (OBD) equipment approved by the Environmental Management Commission, and any other topic required by 40 C.F.R. § 51.367 to be included in the course. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

(d) Self-Inspector Qualifications. — An applicant for a license as an emissions self-inspector must meet all of the following requirements:

(1) Have a license as a safety self-inspector.

(2) Operate a fleet of at least 10 vehicles that are subject to an emissions inspection.

(3) Repealed by Laws 2000-134, s. 15, effective January 1, 2006.

(3a) Have, or have a contract with a person who has, equipment to analyze data provided by the on-board diagnostic (OBD) equipment approved by the Environmental Management Commission.

(4) Regularly employ or contract with an individual who has an emissions inspection mechanic license and who will perform an emissions inspection on the vehicles that are part of the self-inspector's fleet. (1993 (Reg. Sess., 1994), c. 754, s. 1; 2000-134, ss. 13, 14, 15; 2007-503, s. 4.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 4, effective October 1, 2008, and applicable to offenses committed on or after that date, in subdivision (b)(3), inserted "and software" in the first sentence, and added the second sentence.

§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.

(a) Application. — An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. If the applicant does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

(b) Duration of License. — A safety inspection mechanic license expires four years after the date it is issued. An emissions mechanic inspection license expires two years after the date it is issued. A safety inspection station license, an emissions inspection station license, and a self-inspector license are effective until surrendered by the license holder or suspended or revoked by the Division.

(c) Renewal of Mechanic License. — A safety or an emissions inspection mechanic may apply to renew a license by filing an application with the Division on a form provided by the Division. To renew an emissions inspection mechanic license, an applicant must have successfully completed a four-hour emissions refresher course approved by the Division within nine months of applying for renewal. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

§ 20-183.4C. When a vehicle must be inspected; three-day trip permit.

(a) Inspection. — A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

(1) A new vehicle must be inspected before it is sold at retail in this State. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.

(1a) A new motor vehicle dealer who is also licensed pursuant to this Article may, notwithstanding subdivision (1) of this section, examine the safety and emissions control devices on a new motor vehicle and perform such services necessary to ensure the motor vehicle conforms to the required specifications established by the manufacturer and contained in its predelivery check list. The completion of the predelivery inspection procedure required or recommended by the manufacturer on a new motor vehicle shall constitute the inspection required by subdivision (1) of this section. For the purposes of this subdivision, the date of inspection shall be deemed to be the date of the sale of the motor vehicle to a purchaser.

(2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.

(3) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.

(4) Except as authorized by the Commissioner for a single period of time not to exceed 12 months from the initial date of registration, a new or used vehicle acquired by a resident of this State from outside the State must be inspected before the vehicle is registered with the Division.

(5) Except as authorized by the Commissioner for a single period of time not to exceed 12 months from the initial date of registration, a vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected before the vehicle is registered with the Division.

(5a) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.

(6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the registration on the vehicle expires.

(7) A vehicle that is required to be inspected in accordance with this Part may be inspected 90 days prior to midnight of the last day of the month as designated by the vehicle registration sticker.

(8) A new or used vehicle acquired from a retailer in this State and registered with the Division with a new registration or a transferred registration must be inspected in accordance with this Part when the current registration expires.

(9) A used vehicle acquired from a private sale in this State must be inspected in accordance with this Part before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.

(10) An unregistered vehicle must be inspected before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.

(11) A person who owns a vehicle located outside of this State when its emissions inspection becomes due may obtain an emissions inspection in the jurisdiction where the vehicle is located, in lieu of a North Carolina emissions inspection, as long as the inspection meets the requirements of 40 C.F.R. § 51.

(b) Permit. — The Division may issue a three-day trip permit to a person that authorizes the person to drive a vehicle whose inspection authorization or registration has expired. The permit may only be issued when the person has furnished proof of financial responsibility. The permit must describe the vehicle whose inspection authorization or registration has expired. The permit authorizes the person to drive the described vehicle only from the place the vehicle is parked to an inspection station, repair shop, or Division or contract agent registration office.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass the emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection.

(c) Exemption. — The Division may issue a temporary exemption from the inspection requirements of this Article for any vehicle that has been determined by the Division to be principally garaged, as defined under G.S. 58-37-1(11), in this State and is primarily operated outside a county subject to emissions inspection requirements or outside of this State. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 2; 2001-504, s. 11; 2007-481, s. 2; 2007-503, s. 5; 2008-190, s. 3; 2009-319, s. 2.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-481, s. 2, effective August 30, 2007, added subdivision (a)(1a).

Session Laws 2007-503, s. 5, effective October 1, 2008, and applicable to offenses committed on or after that date, added the second sentence in subdivision (a)(1); in subdivision (a)(2), deleted "a location other than a public auction" at the end of the first sentence, and added the second sentence; deleted subdivision (a)(3); in subdivision (a)(4), inserted "new or" and deleted "a person" preceding "outside the State"; deleted subdivision (a)(5a); in subdivision (a)(6), substituted "registration" for "inspection sticker" and deleted "unless another subdivision of this section requires it to be inspected sooner" from the end; and added subdivisions (a)(7) through (a)(11).

Session Laws 2008-190, s. 3, effective October 1, 2008, substituted "three-day" for "one-way" in the section heading; substituted "before" for "within 10 days after" in subdivisions (a)(4) and (a)(5); and rewrote subdivisions (a)(9), (a)(10), and subsection (b).

Session Laws 2009-319, s. 2, effective July 17, 2009, added the exceptions at the beginning of subdivisions (a)(4) and (a)(5); in subsection (b), substituted "a vehicle" for "an insured vehicle" in the first sentence, and added the second sentence; and added subsection (c).

§ 20-183.4D. Procedure when a vehicle is inspected.

(a) Receipt. — When a safety inspection mechanic or an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.

(b) Electronic Inspection Authorization. — When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must issue an electronic inspection authorization to the vehicle at the place designated by the Division. When a vehicle that is subject to both a safety inspection and an emissions inspection passes both inspections or passes the safety inspection and has a waiver for the emissions inspection, the emissions mechanic performing the inspection must issue an electronic inspection authorization to the vehicle at the place designated by the Division.

(c), (d) Repealed by Session Laws 2007-503, s. 6, effective October 1, 2008.

(e) When Electronic Inspection Authorization Expires. — An electronic inspection authorization issued under this Part expires at midnight of the last day of the month designated by the vehicle registration sticker of the following year. (1993 (Reg. Sess., 1994), c. 754, s. 1; 2007-503, s. 6.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 6, effective October 1, 2008, and applicable to offenses committed on or after that date, in subsection (b), substituted "Electronic Inspection Authorization" for "Sticker" in the subsection heading, and substituted "issue an electronic inspection authorization to" for "put an inspection sticker on the windshield of" twice; deleted subsections (c) and (d) which defined content of sticker and when a sticker expires; and added subsection (e).

§ 20-183.5. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.

(a) Requirements. — The Division may issue a waiver for a vehicle, excluding a vehicle owned or being held for retail sale by a motor vehicle dealer, that meets all of the following requirements:

(1) Fails an emissions inspection because it passes the visual inspection but fails the analysis of data provided by the on-board diagnostic (OBD) equipment.

(2) Has documented repairs costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is two hundred dollars ($200.00).

(3) Is reinspected and again fails the inspection because it passes the visual inspection but fails the analysis of data provided by the on-board diagnostic (OBD) equipment.

(4) Meets any other waiver criteria required by 40 C.F.R. § 51.360, or as designated by the Division.

(b) Procedure. — To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an electronic inspection authorization.

(c) Repairs. — The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

(1) Repairs covered by a warranty that applies to the vehicle.

(2) Repairs needed as a result of tampering with an emission control device of the vehicle.

(3) Repairs made by an individual who is not professionally engaged in the business of repairing vehicles.

(4) OBD diagnostics without corresponding repairs.

(d) Electronic Inspection Authorization. — An electronic inspection authorization issued to a vehicle after the vehicle receives a waiver from the requirement of passing the emissions inspection expires at the same time it would if the vehicle had passed the emissions inspection. (1965, c. 734, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1; 2000-134, ss. 16, 17; 2007-503, s. 7.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 7, effective October 1, 2008, and applicable to offenses committed on or after that date, inserted "excluding a vehicle owned or being held for retail sale by a motor vehicle dealer" in the introductory paragraph of subsection (a); rewrote subdivision (a)(2); inserted "or as designated by the Division" in subdivision (a)(4); substituted "electronic inspection authorization" for "inspection sticker" at the end of subsection (b); in subdivision (c)(3), deleted "If the vehicle is a 1981 or newer model" at the beginning, and inserted "professionally"; added subdivision (c)(4); and in subsection (d), substituted "Electronic Inspection Authorization" for "Sticker Expiration," and substituted "electronic inspection authorization issued to" for "inspection sticker put on."

§ 20-183.5A. When a vehicle that fails a safety inspection because of missing emissions control devices may obtain a waiver.

(a) Requirements. — The Division may issue a waiver for a vehicle that meets all of the following requirements:

(1) Fails a safety inspection because it does not have one or more emissions control devices.

(2) Has documented repairs within the previous calendar year to replace missing emissions control devices costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is two hundred dollars ($200.00) if the vehicle is a 1996 or newer model.

(b) Procedure. — To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an electronic inspection authorization.

(c) Repairs. — The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

(1) Repairs covered by a warranty that applies to the vehicle.

(2) Repairs needed as a result of tampering with an emission control device of the vehicle.

(3) Repairs made by an individual who is not professionally engaged in the business of repairing vehicles.

(d) Electronic Inspection Authorization Expiration. — An electronic inspection authorization issued to a vehicle after the vehicle receives a waiver from the requirement of passing the safety inspection expires at the same time it would if the vehicle had passed the safety inspection. (2007-503, ss. 8, 9.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, ss. 8 and 9, effective October 1, 2008, and applicable to offenses committed on or after that date, in subdivision (a)(2), deleted "seventy-five dollars ($75.00) if the vehicle is a pre-1981 model and is" following "amount is" and substituted "1996" for "1981"; substituted "electronic inspection authorization" for "inspection sticker" at the end of subsection (b); in subdivision (c)(3), deleted "If the vehicle is a 1981 or newer model" from the beginning, and inserted "professionally"; and in subsection (d), substituted "Electronic Inspection Authorization" for "Sticker" and "electronic inspection authorization issued to" for "inspection sticker put on."

§ 20-183.6: Repealed by Session Laws 2007-503, s. 10, effective October 1, 2008, and applicable to offenses committed on or after that date.

§ 20-183.6A. Administration of program; duties of license holders.

(a) Division. — The Division is responsible for administering the safety inspection and the emissions inspection programs. In exercising this responsibility, the Division must:

(1) Conduct performance audits, record audits, and equipment audits of those licensed to perform inspections to ensure that inspections are performed properly.
(2) Ensure that Division personnel who audit license holders are knowledgeable about audit procedures and about the requirements of both the safety inspection and the emissions inspection programs.
(3) Perform an emissions inspection on a vehicle when requested to do so by a vehicle owner so the owner can compare the result of the inspection performed by the Division with the result of an inspection performed at an emissions inspection station.
(4) Investigate complaints about a person licensed to perform inspections and reports of irregularities in performing inspections.
(5) Establish written procedures for the issuance of electronic inspection authorizations to persons licensed to perform electronic inspection authorizations.
(6) Submit information and reports to the federal Environmental Protection Agency as required by 40 C.F.R. Part 51.

(b) License Holders. — A person who is licensed by the Division under this Part must post the license at the place required by the Division and must keep a record of inspections performed. The inspection record must identify the vehicle that was inspected, indicate the type of inspection performed and the date of inspection, and contain any other information required by the Division. A self-inspector or an inspection station must send its records of inspections to the Division in the form and at the time required by the Division. An auditor of the Division may review the inspection records of a person licensed by the Division under this Part during normal business hours. (1993 (Reg. Sess., 1994), c. 754, s. 1; 2007-503, s. 11.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 11, effective October 1, 2008, and applicable to offenses committed on or after that date, substituted "electronic inspection authorizations" for "inspection stickers" and for "inspections" in subdivision (a)(5).

§ 20-183.7. Fees for performing an inspection and issuing an electronic inspection authorization to a vehicle; use of civil penalties.

(a) Fee Amount. — When a fee applies to an inspection of a vehicle or the issuance of an electronic inspection authorization, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an electronic inspection authorization:

Type	Inspection	Authorization
Safety Only	$12.75	$ .85
Emissions and Safety	23.75	6.25.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an electronic inspection authorization applies when an electronic inspection authorization is issued to a vehicle. The fee for an inspection sticker does not apply to a replacement inspection sticker for use on a windshield replaced by a business registered with the Division pursuant to G.S. 20-183.6. The fee for inspecting after-factory tinted windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 60 days of the failed inspection without paying another inspection fee.

The inspection fee for an emissions and safety inspection set out in this subsection is the maximum amount that an inspection station or an inspection mechanic may charge for an emissions and safety inspection of a vehicle. An inspection station or an inspection mechanic may charge the maximum amount or any lesser amount for an emissions and safety inspection of a vehicle. The inspection fee for a safety only inspection set out in this subsection may not be increased or decreased. The authorization fees set out in this subsection may not be increased or decreased.

(b) Self-Inspector. — The fee for an inspection does not apply to an inspection performed by a self-inspector. The fee for issuing an electronic inspection authorization to a vehicle applies to an inspection performed by a self-inspector.

(c) Fee Distribution. — Fees collected for electronic inspection authorizations are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Inspection Program Account established in subsection (d) of this section, the Telecommunications Account established in subsection (d1) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Air Quality of the Department of Environment and Natural Resources:

Recipient	Safety Only Electronic Authorization	Emissions and Safety Electronic Authorization
Highway Fund	.55	.55
Inspection Program Account	.00	3.00
Telecommunications Account	.00	1.75
Volunteer Rescue/EMS Fund	.18	.18
Rescue Squad Workers' Relief Fund	.12	.12
Division of Air Quality	.00	.65.

(d) Inspection Program Account. — The Inspection Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle inspection and maintenance program.

(d1) Telecommunications Account. — The Telecommunications Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to provide equipment and telecommunications services associated with the vehicle safety and emissions inspection and maintenance program.

(d2) Repealed by Session Laws 2001-504, s. 3, effective July 1, 2007.

(e) Civil Penalties. — Civil penalties collected under this Part shall be credited to the Highway Fund as nontax revenue.

(f) Inspection Stations Required to Post Fee Information. — The Division shall approve the form and style of one or more standard signs to be used to display the information required by this subsection. The Division shall require that one or more of the standard signs be conspicuously posted at each inspection station in a manner reasonably calculated to make the information on the sign readily available to each person who presents a motor vehicle to the station for inspection. The sign shall include the following information:

(1) The maximum and minimum amounts of the inspection fee authorized by this section.
(2) The amount of the inspection fee charged by the inspection station and a statement that clearly indicates that the amount of the inspection fee is determined by the inspection station, that the inspection fee is retained by the inspection station to compensate the station for performing the inspection, and that the inspection fee is not paid to the State.
(3) The amount of the electronic inspection authorization fee, if the motor vehicle passes the inspection, a statement that the electronic inspection authorization fee is paid to the State, and a brief summary of the purposes for which the electronic inspection authorization fee is collected.
(4) The total fee to be charged if the motor vehicle passes the inspection.
(5) A statement that a vehicle that fails an inspection may be reinspected at the same station within 30 days of the inspection without payment of another inspection fee.

(g) Information on Receipt. — The information set out in subdivisions (1) through (5) of subsection (f) of this section shall be set out in not smaller than 12 point type and shall be shown graphically in the form of a pie chart on the inspection receipt.

(h) Subsections (f) and (g) of this section apply only to inspection stations that perform both emissions and safety inspections. (1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5; c. 875, s. 4; 1979, c. 688; 1979, 2nd Sess., c. 1180, ss. 5, 6; 1981, c. 690, s. 17; 1981 (Reg. Sess., 1982), c. 1261, s. 2; 1985, c. 415, ss. 1-6; 1985 (Reg. Sess., 1986), c. 1018, s. 8; 1987, c. 584, ss. 1-3; 1987 (Reg. Sess., 1988), c. 1062, ss. 3-5; 1989, c. 391, s. 3; c. 534, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 33(b); 1991 (Reg. Sess., 1992), c. 943, s. 1; 1993, c. 385, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 1; 1997-29, s. 4; 1997-443, s. 11A.123; 2000-75, s. 3; 2001-504, ss. 1-3; 2006-230, s. 2; 2007-364, s. 2; 2007-503, s. 12; 2009-319, s. 3.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-364, s. 2, effective January 1, 2009, substituted "60 days" for "30 days" in the third paragraph of subsection (a).

Session Laws 2007-503, s. 12, effective October 1, 2008, and applicable to offenses committed on or after that date, substituted "issuing an electronic inspection authorization to" for "putting an inspection sticker on" in the section heading; in subsection (a), substituted "electronic inspection authorization" for "inspection sticker" twice in the first paragraph, in the table, substituted "Authorization" for "Sticker" in the column heading, and "$12.75" for "$8.25" in the entry for "Safety Only," in the third paragraph, substituted "electronic inspection authorization" for "inspection sticker" and "electronic inspection authorization is issued to" for "inspection sticker is put on" in the second sentence, and deleted the third sentence, which read: "The fee for an inspection sticker does not apply to a replacement inspection sticker for use on a windshield replaced by a business registered with the Division pursuant to G.S. 20-183.6," and in the last paragraph, substituted "authorization fees" for "sticker fees" near the end; substituted "issuing an electronic inspection authorization to" for "putting an inspection sticker on" in subsection (b); in subsection (c), substituted "electronic inspection authorizations" for "inspection stickers" in the introductory paragraph, and in the table, substituted "Electronic Authorization" for "Sticker" in both column headings; inserted "safety and" in subsection (d1); and substituted "electronic inspection authorization" for "sticker" three times in subdivision (f)(3).

Session Laws 2009-319, s. 3, effective July 17, 2009, substituted "Inspection Program Account" for "Emissions Program Account" throughout subsections (c) and (d), and in subsection (d), deleted "emissions" preceding "inspection" in the last sentence.

§ 20-183.7A. Penalties applicable to license holders and suspension or revocation of license for safety violations.

(a) Kinds of Violations. — The civil penalty schedule established in this section applies to safety self-inspectors, safety inspection stations, and safety inspection mechanics. The schedule categorizes safety violations into serious (Type I), minor (Type II), and technical (Type III) violations. A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the safety or emissions reduction benefits of the safety inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting a safety inspection or complying with the safety inspection requirements but does not directly affect the safety benefits or emission reduction benefits of the safety inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. — The Division must take the following action for a violation:

(1) Type I. — For a first or second Type I violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years. For a first or second Type I violation within seven years by a safety inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by a safety inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.

(2) Type II. — For a first or second Type II violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days. For a first or second Type II violation within seven years by a safety inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by a safety inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.

(3) Type III. — For a first or second Type III violation within seven years by a safety self-inspector, a safety inspection station, or a safety

inspection mechanic, send a warning letter. For a third or subsequent Type III violation within seven years by the same safety license holder, assess a civil penalty of twenty-five dollars ($25.00).

(c) Station or Self-Inspector Responsibility. — It is the responsibility of a safety inspection station and a safety self-inspector to supervise the safety inspection mechanics it employs. A violation by a safety inspection mechanic is considered a violation by the station or self-inspector for whom the mechanic is employed.

(d) Multiple Violations. — If a safety self-inspector, a safety inspection station, or a safety inspection mechanic commits two or more violations in the course of a single safety inspection, the Division shall take only the action specified for the most significant violation.

(e) Mechanic Training. — A safety inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4 and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully. (2001-504, s. 12.)

§ 20-183.7B. Acts that are Type I, II, or III safety violations.

(a) Type I. — It is a Type I violation for a safety self-inspector, a safety inspection station, or a safety inspection mechanic to do any of the following:

(1) Issue a safety electronic inspection authorization to a vehicle without performing a safety inspection of vehicle.

(2) Issue a safety electronic inspection authorization to a vehicle after performing a safety inspection of the vehicle and determining that the vehicle did not pass the inspection.

(3) Allow a person who is not licensed as a safety inspection mechanic to perform a safety inspection for a self-inspector or at a safety station.

(4) Sell, issue, or otherwise give an electronic inspection authorization to another, other than as the result of a vehicle inspection in which the vehicle passed the inspection.

(5) Be unable to account for five or more electronic inspection authorizations at any one time upon the request of an officer of the Division.

(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.

(7) Transfer an electronic inspection authorization from one vehicle to another.

(8) Conduct a safety inspection of a vehicle without driving the vehicle and without raising the vehicle and without opening the hood of the vehicle to check equipment located therein.

(9) Solicit or accept anything of value to pass a vehicle other than as provided in this Part.

(b) Type II. — It is a Type II violation for a safety self-inspector, a safety inspection station, or a safety inspection mechanic to do any of the following:

(1) Issue a safety electronic inspection authorization to a vehicle without driving the vehicle and checking the vehicle's braking reaction, foot brake pedal reserve, and steering free play.

(2) Issue a safety electronic inspection authorization to a vehicle without raising the vehicle to free each wheel and checking the vehicle's tires, brake lines, parking brake cables, wheel drums, exhaust system, and the emissions equipment.

(3) Issue a safety electronic inspection authorization to a vehicle without raising the hood and checking the master cylinder, horn mounting, power steering, and emissions equipment.

(4) Conduct a safety inspection of a vehicle outside the designated inspection area.

(5) Issue a safety electronic inspection authorization to a vehicle with inoperative equipment, or with equipment that does not conform to the vehicle's original equipment or design specifications, or with equipment that is prohibited by any provision of law.

(6) Issue a safety electronic inspection authorization to a vehicle without performing a visual inspection of the vehicle's exhaust system.

(7) Issue a safety electronic inspection authorization to a vehicle without checking the exhaust system for leaks.

(8) Issue a safety electronic inspection authorization to a vehicle that is required to have any of the following emissions control devices but does not have the device:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.
i. Exhaust gas recirculation (EGR) valve.

(9) Issue a safety electronic inspection authorization to a vehicle after failing to inspect four or more of following:

a. Emergency brake.
b. Horn.
c. Headlight high beam indicator.
d. Inside rearview mirror.
e. Outside rearview mirror.
f. Turn signals.
g. Parking lights.
h. Headlights — operation and lens.
i. Headlights — aim.
j. Stoplights.
k. Taillights.
l. License plate lights.
m. Windshield wiper.
n. Windshield wiper blades.
o. Window tint.

(10) Impose no fee for a safety inspection of a vehicle or the issuance of a safety electronic inspection authorization or impose a fee for one of these actions in an amount that differs from the amount set in G.S. 20-183.7.

(c) Type III. — It is a Type III violation for a safety self-inspector, a safety inspection station, or a safety inspection mechanic to do any of the following:

(1) Fail to post a safety inspection station license issued by the Division.

(2) Fail to send information on safety inspections to the Division at the time or in the form required by the Division.

(3) Fail to post all safety information required by federal law and by the Division.

(4) Fail to put the required information on an inspection receipt in a legible manner using ink.

(5) Issue a receipt that is signed by a person other than the safety inspection mechanic.

(6) Place an incorrect expiration date on an electronic inspection authorization.

(7) Issue a safety electronic inspection authorization to a vehicle after having failed to inspect three or fewer of the following:
  a. Emergency brake.
  b. Horn.
  c. Headlight high beam indicator.
  d. Inside rearview mirror.
  e. Outside rearview mirror.
  f. Turn signals.
  g. Parking lights.
  h. Headlights — operation and lens.
  i. Headlights — aim.
  j. Stoplights.
  k. Taillights.
  l. License plate lights.
  m. Windshield wiper.
  n. Windshield wiper blades.
  o. Window tint.

(d) Other Acts. — The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation. (2001-504, s. 12; 2007-503, s. 13.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 13, effective October 1, 2008, and applicable to offenses committed on or after that date, substituted "electronic inspection authorization to" for "inspection sticker on," "electronic inspection authorization" for "inspection sticker," "electronic inspection authorizations" for "inspection stickers," and "Issue a safety" for "Put a safety" everywhere they appear throughout the section; and inserted "issue" following "Sell" in subdivision (a)(4).

§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

(a) Infractions. — A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00):

(1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current electronic inspection authorization or otherwise.

(2) Allows an electronic inspection authorization to be issued to a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the electronic inspection authorization was issued or was not inspected properly.

(3) Issues an electronic inspection authorization on a vehicle, knowing or having reasonable grounds to know that an inspection of the vehicle was not performed or was performed improperly. A person who is cited for a civil penalty under G.S. 20-183.8B for an emissions violation involving the inspection of a vehicle may not be charged with an infraction under this subdivision based on that same vehicle.

(4) Alters the original certified configuration or data link connectors of a vehicle in such a way as to make an emissions inspection by analysis

of data provided by on-board diagnostic (OBD) equipment inaccurate or impossible.

(b) Defenses to Infractions. — Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the electronic inspection authorization expired and a current electronic inspection authorization was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety inspection or an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle or the electronic inspection authorization was issued to the vehicle when the citation was issued.

(b1) A person who performs a safety inspection without a license, as required under G.S. 20-183.4, or an emissions inspection without a license, as required under G.S. 20-183.4A, is guilty of a Class 3 misdemeanor.

(c) Felony. — A person who does any of the following commits a Class I felony:

(1) Forges an inspection sticker or inspection receipt.

(2) Buys, sells, issues, or possesses a forged inspection sticker or electronic inspection authorization.

(3) Buys, sells, issues, or possesses an electronic inspection authorization other than as the result of either of the following:

a. Having a license as an inspection station, a self-inspector, or an inspection mechanic and obtaining the electronic inspection authorization from the Division through an electronic authorization vendor in the course of business.

b. A vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.

(4) Solicits or accepts anything of value in order to pass a vehicle that fails a safety or emissions inspection.

(5) Fails a vehicle for any reason not authorized by law. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620; 1973, cc. 909, 1322; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 4; 1985, c. 764, s. 23; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 5; 1999-452, s. 25; 2001-504, s. 13; 2007-503, s. 14; 2009-319, s. 5.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 14, effective October 1, 2008, and applicable to offenses committed on or after that date, in subsections (a) and (b), substituted "electronic inspection authorization" for "inspection sticker" and "sticker" throughout; in subsection (a), substituted "issued to" for "put on" and "issued" for "attached" in subdivision (a)(2), and substituted "Issues" for "Puts" in subdivision (a)(3); and inserted "or the electronic inspection authorization was issued to the vehicle" in subdivision (b)(4); added "or inspection receipt" in subdivision (c)(1); inserted "issues" following "sells" and "or electronic inspection authorization" following "sticker" in subdivision (c)(2); in subdivision (c)(3), inserted "issues" and substituted "electronic inspection authorization" for "inspection sticker" in the introductory paragraph and the first time it appears in subdivision (c)(3)a, and inserted "through an electronic authorization vendor" in subdivision (c)(3)a.

Session Laws 2009-319, s. 5, effective December 1, 2009, and applicable to offenses committed on or after that date, added subsection (b1).

§ 20-183.8A. Civil penalties against motorists for emissions violations; waiver.

(a) Civil Penalties. — The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an inspection and who engages in any of the emissions violations set out in this subsection. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. The civil penalties and violations are as follows:

(1) Fifty dollars ($50.00) for failure to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Two hundred fifty dollars ($250.00) for instructing or allowing a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Two hundred fifty dollars ($250.00) for incorrectly stating the vehicle's county of registration to avoid having an emissions inspection of the vehicle.

(b) Waiver. — The Division must waive the civil penalty assessed under subdivision (a)(1) of this section against a person who establishes the following:

(1) The person was continuously out of the State on active military duty from the date the electronic authorization expired to the date the four-month grace period expired.

(2) No person operated the vehicle from the date the electronic authorization expired to the date the four-month grace period expired.

(3) The person obtained a current electronic authorization within 30 days after returning to the State. (1993 (Reg. Sess., 1994), c. 754, ss. 1, 8; 1998-212, s. 27.6(b); 2007-364, ss. 3, 4; 2007-503, s. 15; 2009-319, s. 4.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-364, s. 3, effective August 17, 2007, and applicable to civil penalties assessed for violations committed on or after that date, added "waiver" in the section heading; added subsection (b) and designated the former provisions of the section as subsection (a); and in subsection (a), added the subsection heading "Civil Penalties."

Session Laws 2007-364, s. 4, effective July 1, 2008, and applicable to civil penalties assessed for violations committed on or after that date, in the introductory paragraph of subsection (a), substituted "must assess" for "shall assess" near the beginning, substituted "in any of the emissions violations set out in this subsection" for "does any of the following," and added the last two sentences; rewrote subdivisions (a)(1) through (3); and deleted the former last paragraph of the subsection, which provided penalty amounts for certain vehicles.

Session Laws 2007-503, s. 15, effective October 1, 2008, and applicable to offenses committed on or after that date, in the former last paragraph of subsection (a) (which was deleted by a prior amendment to the section by Session Laws 2007-364, s. 4, effective July 1, 2008), deleted "one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and" and deleted "if the vehicle is a 1981 or newer model vehicle."

Session Laws 2009-319, s. 4, effective July 17, 2009, in subsection (a), in the introductory language, deleted "emissions" preceding "inspection"; and in subsection (b), substituted "electronic authorization" for "inspection sticker" three times.

§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. — The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. — The Division must take the following action for a violation:

(1) Type I. — For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.

(2) Type II. — For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.

(3) Type III. — For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within three years by the same emissions license holder, assess a civil penalty of twenty-five dollars ($25.00).

(c) Station or Self-Inspector Responsibility. — It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A violation by an emissions inspector mechanic is considered a violation by the station or self-inspector for whom the mechanic is employed.

(d) Missing Stickers. — The Division must assess a civil penalty against an emissions inspection station, a windshield replacement station, or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

(d1) Penalty for Missing Stickers. — The amount of the penalty is twenty-five dollars ($25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b) of this section. Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b) of this section.

(e) Mechanic Training. — An emissions inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4A and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 6; 2001-504, s. 14.)

CASE NOTES

Suspension Warranted. — Suspension of a vehicle inspection facility's equipment inspection license was warranted where the facility failed to visually inspect a truck's exhaust emission system and determine that it did not have a catalytic converter as the facility's violation had an effect on the emission reduction benefits of the testing program and thus was a Type I violation. Darryl Burke Chevrolet, Inc. v. Aikens, 131 N.C. App. 31, 505 S.E.2d 581 (1998), aff'd, 350 N.C. 83, 511 S.E.2d 639 (1999).

§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. — It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Issue an emissions electronic inspection authorization on a vehicle without performing an emissions inspection of the vehicle.

(1a) Issue an emissions electronic inspection authorization to a vehicle after performing an emissions inspection of the vehicle and determining that the vehicle did not pass the inspection.

(2) Use a test-defeating strategy when conducting an emissions inspection by changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year, or using data provided by the on-board diagnostic (OBD) equipment of another vehicle to achieve a passing result.

(3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.

(4) Sell, issue, or otherwise give an electronic inspection authorization to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.

(5) Be unable to account for five or more electronic inspection authorizations at any one time upon the request of an auditor of the Division.

(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.

(7) Transfer an electronic inspection authorization from one vehicle to another.

(b) Type II. — It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer or to equipment to analyze data provided by on-board diagnostic (OBD) equipment.

(2) Keep compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(3) Issue a safety electronic inspection authorization or an emissions electronic inspection authorization on a vehicle that is required to have one of the following emissions control devices but does not have it:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.
i. Exhaust gas recirculation (EGR) valve.

(4) Issue a safety electronic inspection authorization or an emissions electronic inspection authorization on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.

(5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions electronic inspection authorization or impose a fee for one of these actions in an amount that differs from the amount set in G.S. 20-183.7.

(c) Type III. — It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Fail to post an emissions license issued by the Division.

(2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.

(3) Fail to post emissions information required by federal law to be posted.

(4) Repealed by Session Laws 2007-503, s. 16, effective October 1, 2008.

(5) Fail to put the required information on an inspection receipt in a legible manner.

(6) Repealed by Session Laws 2007-503, s. 16, effective October 1, 2008.

(d) Other Acts. — The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 11; 1997-29, s. 7; 1997-456, s. 35; 2000-134, ss. 18, 19; 2001-504, ss. 15, 16, 19; 2007-503, s. 16.)

Editor's Note. — Session Laws 2007-503, ss. 16.1 and 16.2, provide: "SECTION 16.1. The Division may utilize the vendor currently providing services for the emissions stations to help implement the provisions of this act.

"SECTION 16.2. The Division shall report on the progress of implementing this act to the Joint Legislative Transportation Oversight Committee by May 1, 2008."

Effect of Amendments. — Session Laws 2007-503, s. 16, effective October 1, 2008, and applicable to offenses committed on or after that date, throughout the section, substituted "Issue" for "Put" and "electronic inspection authorization" for "inspection sticker" throughout the section; substituted "electronic inspection authorization to" for "inspection sticker on" in subdivision (a)(1a); substituted "emissions inspection by changing" for "emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, changing" in subdivision (a)(2); inserted "issue" following "Sell" in subdivision (a)(4); and deleted former subdivisions (c)(4) and (6).

§ 20-183.8D. Suspension or revocation of license.

(a) Safety. — The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part.

(b) Emissions. — The Division may suspend or revoke an emissions self-inspector license, an emissions inspection station license, and an emissions inspection mechanic license issued under this Part for any of the following reasons:

(1) The suspension or revocation is imposed under G.S. 20-183.8B.

(2) Failure to pay a civil penalty imposed under G.S. 20-183.8B within 30 days after it is imposed. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 8.)

CASE NOTES

Failure to Visually Inspect. — Suspension of a vehicle inspection facility's equipment inspection license was warranted where the facility failed to visually inspect a truck's exhaust emission system and determine that it did not have a catalytic converter as the facility's violation had an effect on the emission reduction benefits of the testing program and thus was a Type I violation. Darryl Burke Chevrolet, Inc. v. Aikens, 131 N.C. App. 31, 505 S.E.2d 581 (1998), aff'd, 350 N.C. 83, 511 S.E.2d 639 (1999).

§ 20-183.8E: Recodified as § 20-183.8G at the direction of the Revisor of Statutes.

Editor's Note. — This section was recodified as G.S. 20-183.8G at the direction of the Revisor of Statutes in order to place G.S. 20-183.8F between G.S. 20-183.8D and this section, as specified in Session Laws 1997-29, s.9.

§ 20-183.8F. Requirements for giving license holders notice of violations and for taking summary action.

(a) Finding of Violation. — When an auditor of the Division finds that a violation has occurred that could result in the suspension or revocation of an inspection station license, a self-inspector license, a mechanic license, or the registration of a person engaged in the business of replacing windshields, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the completion of the investigation that resulted in the discovery of the violation. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.

(b) Notice of Charges. — When the Division decides to charge an inspection station, a self-inspector, a mechanic, or a person who is engaged in the business of replacing windshields with a violation that could result in the suspension or revocation of the person's license, an auditor of the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of this right, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. G.S. 20-183.8E sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. — The right granted by subsection (b) of this section to have a hearing before a license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an inspection station, a self-inspector, or a mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review.

(d) A notice or statement prepared pursuant to this section or an order of the Division that is directed to a mechanic may be served on the mechanic by delivering a copy of the notice, statement, or order to the station or to the place of business of the self-inspector where the mechanic is employed. (1997-29, s. 9; 1999-328, s. 3.13; 2001-504, s. 17.)

Editor's Note. — This section was originally enacted as G.S. 20-183.8D.1 and was renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 1999-328, s. 5.1 provides that the act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

§ 20-183.8G. Administrative and judicial review.

(a) Right to Hearing. — A person who applies for a license or registration under this Part or who has a license or registration issued under this Part has the right to a hearing when any of the following occurs:

(1) The Division denies the person's application for a license or registration.

(2) The Division delivers to the person a written statement of charges of a violation that could result in the suspension or revocation of the person's license.

(3) The Division summarily suspends or revokes the person's license following review and authorization of the proposed adverse action by a judge.

(4) The Division assesses a civil penalty against the person.

(5) The Division issues a warning letter to the person.

(6) The Division cancels the person's registration.

(b) Hearing After Statement of Charges. — When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within 10 business days after receiving the request. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing.

(c) Hearing After Summary Action. — When the Division summarily suspends a license issued under this Part after judicial review and authorization of the proposed action, the person whose license was suspended or revoked may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person was notified of the summary action. The Division must hold a hearing requested under this subsection within 14 days after receiving the request.

(d) All Other Hearings. — When this section gives a person the right to a hearing and subsection (b) or (c) of this section does not apply to the hearing, the person may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person receives written notice of the action for which a hearing is requested. The Division must hold a hearing within 90 days after the Division receives the request.

(e) Review by Commissioner. — The Commissioner may conduct a hearing required under this section or may designate a person to conduct the hearing. When a person designated by the Commissioner holds a hearing and makes a decision, the person who requested the hearing has the right to request the Commissioner to review the decision. The procedure set by the Division governs the review by the Commissioner of a decision made by a person designated by the Commissioner.

(f) Decision. — A decision made after a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the decision contains a finding that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. A decision made after a hearing on any other action may uphold or modify the action.

(g) Judicial Review. — Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision made under this section. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1997-29, s. 10; 1999-328, s. 3.14; 1999-456, s. 69; 2009-550, s. 3.1.)

Editor's Note. — This section was formerly G.S. 20-183.8E. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 1999-456, s. 69, provided that in Session Laws 1999-328, original s. 13.14 was redesignated as s. 3.14.

Session Laws 1999-328, s. 5.1 provides that this act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Effect of Amendments. — Session Laws 2009-550, s. 3.1, effective August 28, 2009, rewrote the second paragraph of subsection (b).

ARTICLE 3B.

Permanent Weigh Stations and Portable Scales.

§ 20-183.9. Establishment and maintenance of permanent weigh stations.

The Department of Crime Control and Public Safety is hereby authorized, empowered and directed to equip and operate permanent weigh stations equipped to weigh vehicles using the streets and highways of this State to determine whether such vehicles are being operated in accordance with legislative enactments relating to weights of vehicles and their loads. The permanent weigh stations shall be established at such locations on the streets and highways in this State as will enable them to be used most advantageously in determining the weight of vehicles and their loads. The Department of Transportation shall be responsible for the maintenance and upkeep of all permanent weigh stations established pursuant to this section. (1951, c. 988, s. 1; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, ss. 34, 37; 1979, c. 76; 2002-159, s. 31.5(b); 2002-190, s. 7; 2004-124, s. 18.3(b); 2006-66, s. 21.8.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-183.10. Operation of the permanent weigh stations by the Department of Crime Control and Public Safety, Division of State Highway Patrol, uniformed personnel.

The permanent weigh stations to be established pursuant to the provisions of this Article shall be operated by the Department of Crime Control and Public Safety, Division of State Highway Patrol, who shall assign a sufficient number of sworn and nonsworn personnel to the various weigh stations. Sworn personnel of the Division of State Highway Patrol shall supervise all nonsworn personnel assigned to weigh stations. The sworn and nonsworn personnel shall have authority to weigh vehicles and to assess civil penalties pursuant to Article 3, Part 9 of this Chapter and shall wear uniforms to be selected and furnished by the Department of Crime Control and Public Safety, Division of State Highway Patrol. The uniformed sworn and nonsworn personnel assigned to the various permanent weigh stations shall weigh vehicles and complete various reports as may be necessary for recording violations relating to the weight of vehicles and their loads. The uniformed officers assigned to the various permanent weigh stations shall have the powers of peace officers for the purpose of enforcing the provisions of this Chapter and in making arrests, serving process, and appearing in court in all matters and things relating to the weight of vehicles and their loads. (1951, c. 988, s. 2; 1975, c. 716, s. 5; 1977, c. 319; 2002-159, s. 31.5(b); 2002-190, s. 8; 2004-124, s. 18.3(c).)

Establish pilot program for motor carrier enforcement civilian inspection support teams. — Session Laws 2005-276, ss. 28.24(a) and (b), provide: "(a) The State Highway Patrol Motor Carrier Enforcement Section shall establish a piot program comprised of two civilian data collection teams to supplement portable weight and inspection operations and to study the potential for increasing the effectiveness of Motor Carrier Enforcement Officers operating remotely from permanent weigh station facilities. Each team shall consist of two civilian members and shall be provided all necessary equipment to supplement the portable weight and inspection operations of the Motor Carrier Enforcement Section of the State Highway Patrol.

"(b) The State Highway Patrol shall report the effectiveness of the Civilian Inspection Support Team pilot program and make any recommendations which may increase the effectiveness of Motor Carrier Enforcement activities on bypass routes and areas remote from permanent weigh station facilities to the Joint Legislative Transportation Oversight Committee by August 1, 2006."

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 20-183.11: Repealed by Session Laws 1995, c. 109, s. 5.

§ 20-183.12: Repealed by Session Laws 1995, c. 163, s. 12.

Article 3C.

Vehicle Equipment Safety Compact.

§ 20-183.13. Compact enacted into law; form of Compact.

The Vehicle Equipment Safety Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

VEHICLE EQUIPMENT SAFETY COMPACT

ARTICLE I. Findings and Purposes.

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this Compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this Compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II. Definitions.

As used in this Compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III. The Commission.

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the Commission.

The Commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the Commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the Commission in such form as the Commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the Commission for expenses actually incurred in attending Commission meetings or while engaged in the business of the Commission.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The Commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission, and together with the treasurer shall be bonded in such amount as the Commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the Commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director with approval of the Commission, or the Commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Commission shall be eligible for Social Security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a government agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The Commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all Commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The Commission annually shall make to the governor and legislature of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been issued by the Commission. The Commission may make such additional reports as it may deem desirable.

ARTICLE IV. Research and Testing.

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the Commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V. Vehicular Equipment.

(a) In the interest of vehicular and public safety, the Commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the Commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than 60 days after the publication of a report containing the results of such study, the Commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the Commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the Commission will be fair and equitable and effectuate the purposes of this Compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the Commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any Commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the Commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the Commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the Commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI. Finance.

(a) The Commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the Commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article III(h) of this Compact, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article III(h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

ARTICLE VII. Conflict of Interest.

(a) The Commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the Commission and contractors with the Commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the Commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a Commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the Commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the Commission subject to cancellation by the Commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the Commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the Commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII. Advisory and Technical Committees.

The Commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX. Entry into Force and Withdrawal.

(a) This Compact shall enter into force when enacted into law by any six or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1963, c. 1167, s. 1.)

§ 20-183.14. Legislative findings.

The General Assembly finds that:

(1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Division of Motor Vehicles, acting upon recommendations of the Vehicle Equipment Safety Commission and pursuant to the Vehicle Equipment Safety Compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this Article. (1963, c. 1167, s. 2; 1975, c. 716, s. 5.)

§ 20-183.15. Approval of rules and regulations by General Assembly required.

Pursuant to Article V(e) of the Vehicle Equipment Safety Compact, it is the intention of this State and it is hereby provided that no rule, regulation or code issued by the Vehicle Equipment Safety Commission in accordance with Article V of the Compact shall take effect until approved by act of the General Assembly. (1963, c. 1167, s. 3.)

§ 20-183.16. Compact Commissioner.

The Commissioner of this State on the Vehicle Equipment Safety Commission shall be the Secretary of Transportation or such other officer of the Department of Transportation as the Secretary may designate. (1963, c. 1167, s. 4; 1975, c. 716, s. 5.)

State Government Reorganization. — The administration of the Vehicle Equipment Safety Compact was transferred to the Department of Transportation and Highway Safety by former G.S. 143A-108, enacted by Session Laws 1971, c. 864. For present provisions as to the Department of Transportation, see G.S. 143B-345 et seq.

§ 20-183.17. Cooperation of State agencies authorized.

Within appropriations available therefor, the departments, agencies and officers of the government of this State may cooperate with and assist the Vehicle Equipment Safety Commission within the scope contemplated by Article III(h) of the Compact. The departments, agencies and officers of the government of this State are authorized generally to cooperate with said Commission. (1963, c. 1167, s. 5.)

§ 20-183.18. Filing of documents.

Filing of documents as required by Article III(j) of the Compact shall be with the Secretary of State. (1963, c. 1167, s. 6.)

§ 20-183.19. Budget procedure.

Pursuant to Article VI(a) of the Compact, the Vehicle Equipment Safety Commission shall submit its budgets to the Director of the Budget. (1963, c. 1167, s. 7.)

§ 20-183.20. Inspection of financial records of Commission.

Pursuant to Article VI(e) of the Compact, the operations of the Vehicle Equipment Safety Commission shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1963, c. 1167, s. 8; 1983, c. 913, s. 6.)

§ 20-183.21. "Executive head" defined.

The term "executive head" as used in Article IX(b) of the Compact shall, with reference to this State, mean the Governor. (1963, c. 1167, s. 9.)

ARTICLE 4.

State Highway Patrol.

§ 20-184. Patrol under supervision of Department of Crime Control and Public Safety.

The Secretary of Crime Control and Public Safety, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Secretary shall establish in the Department of Crime Control and Public Safety a State Highway Patrol Division, prescribe regulations governing said Division, and assign to the Division such duties as he may deem proper. (1935, c. 324, s. 2; 1939, c. 387, s. 1; 1941, c. 36; 1975, c. 716, s. 5; 1977, c. 70, ss. 13, 14, 15.)

Cross References. — As to transfer of the State Highway Patrol to the Department of Crime Control and Public Safety, see G.S. 143A-242.

Editor's Note. — Session Laws 2009-461, ss. 1 and 2, provide: "SECTION 1. Notwithstanding the authority of the Secretary of Crime Control and Public Safety to adopt rules for the maintenance and operation of a Highway Patrol rotation wrecker system, the amendments to 14A NCAC 09H.0321(10), which became effective on July 18, 2008, are void and unenforceable to the extent such amendments:

"(1) Limit submission of initial applications and reapplications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.

"(2) Limit vehicle storage fees to the maximum allowed by G.S. 20-28.3.

"(3) Require that towing and recovery fees be within fifteen percent (15%) of the median price charged within the applicable Highway Patrol Troop.

"Notwithstanding the limitations set out in this section, the Highway Patrol may require that wrecker services, when responding to rotation wrecker calls, charge reasonable fees for services rendered and that any fee charged for rotation services not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions.

"SECTION 2. The Secretary of Crime Control and Public Safety shall adopt amendments to 14A NCAC 09H.0321(10) to conform to the requirements of this act."

CASE NOTES

Power to Prescribe Regulations. — Trial court did not err in granting summary judgment to the governor, state public safety agency, state highway patrol, and certain unidentified persons, and denying the wrecker service owner's motion for summary judgment on the wrecker service owner's declaratory judgment action seeking a determination that regulations used to remove his wrecker service business from the state's Wrecker Rotation Services List were illegal and that the regulations were preempted by federal law; the trial court had the authority to declare that the regulations were not illegal because the General Assembly granted to the state public safety agency the power to direct the state highway patrol to establish regulations for private wrecker services. Ramey v. Easley, 178 N.C. App. 197, 632 S.E.2d 178, 2006 N.C. App. LEXIS 1308 (2006).

§ 20-185. Personnel; appointment; salaries.

(a) The State Highway Patrol shall consist of a commanding officer, who shall be appointed by the Governor and whose rank shall be designated by the Governor, and such additional subordinate officers and members as the Secretary of Crime Control and Public Safety, with the approval of the

Governor, shall direct. Members of the State Highway Patrol shall be appointed by the Secretary, with the approval of the Governor, and shall serve at the pleasure of the Governor and Secretary. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Department of Administration. Notwithstanding any other provision of this Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to twenty-one percent (21%) of the personnel actually serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to require the demotion, reassignment or change in status of any member of the State Highway Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway Patrol personnel assigned in supervisory capacity is required in order for the State Highway Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the fourth sentence of this subsection, that reduction shall be achieved through normal attrition resulting from supervisory personnel resigning, retiring or voluntarily transferring from supervisory positions.

(b) to (f) Repealed by Session Laws 1979, 2nd Session, c. 1272, s. 2.

(g), (h) Struck out by Session Laws 1961, c. 833, s. 6.2.

(i) Positions in the Highway Patrol Division approved by the General Assembly in the first fiscal year of a biennium to be added in the second fiscal year of a biennium may not be filled before adjustments to the budget for the second fiscal year of the budget are enacted by the General Assembly. If a position to be added in the Highway Patrol Division for the second fiscal year of the biennium requires training, no applicant may be trained to fill the position until the budget adjustments for the second fiscal year are enacted by the General Assembly. (1929, c. 218, s. 1; 1931, c. 381; 1935, c. 324, s. 1; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 1; 1953, c. 1195, s. 1; 1955, c. 372; 1957, c. 1394; 1959, cc. 370, 1320; 1961, c. 833, s. 6.2; 1973, c. 59; 1975, c. 61, ss. 1, 2; c. 716, s. 5; 1977, c. 70, ss. 6-8, 13; c. 329, ss. 1-3; cc. 749, 889; 1979, 2nd Sess., c. 1272, s. 2; 1989 (Reg. Sess., 1990), c. 1066, s. 133.)

Cross References. — As to payment of salaries of certain State law-enforcement officers incapacitated as the result of injury by accident or occupational disease arising out of and in the course of performance of their duties, see G.S. 143-166.13 et seq.

§ 20-186. Oath of office.

Each member of the State Highway Patrol shall subscribe and file with the Secretary of Crime Control and Public Safety an oath of office for the faithful performance of his duties. (1929, c. 218, s. 2; 1937, c. 339, s. 1; 1941, c. 36; 1977, c. 70, s. 9.)

§ 20-187. Orders and rules for organization and conduct.

The Secretary of Crime Control and Public Safety is authorized and empowered to make all necessary orders, rules and regulations for the organization, assignment, and conduct of the members of the State Highway Patrol. Such orders, rules and regulations shall be subject to the approval of the Governor. (1929, c. 218, ss. 1, 3; 1931, c. 381; 1933, c. 214, ss. 1, 2; 1939, c. 387, s. 2; 1941, c. 36; 1977, c. 70, s. 13.)

CASE NOTES

Cited in Darnell v. North Carolina Dep't of Transp. & Hwy. Safety, 30 N.C. App. 328, 226 S.E.2d 879 (1976).

§ 20-187.1. Awards.

(a) The patrol commander shall appoint an awards committee consisting of one troop commander, one troop executive officer, one district sergeant, one corporal, two troopers and one member of patrol headquarters staff. All committee members shall serve for a term of one year. The member from patrol headquarters staff shall serve as secretary to the committee and shall vote only in case of ties. The committee shall meet at such times and places designated by the patrol commander.

(b) The award to be granted under the provisions of this section shall be the North Carolina State Highway Patrol award of honor. The North Carolina State Highway Patrol award of honor is awarded in the name of the people of North Carolina and by the Governor to a person who, while a member of the North Carolina State Highway Patrol, distinguishes himself conspicuously by gallantry and intrepidity at the risk of personal safety and beyond the call of duty while engaged in the preservation of life and property. The deed performed must have been one of personal bravery and self-sacrifice so conspicuous as to clearly distinguish the individual above his colleagues and must have involved risk of life. Proof of the performance of the service will be required and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit.

(c) Recipients of the awards hereinabove provided for will be entitled to receive a framed certificate of the award and an insignia designed to be worn as a part of the State Highway Patrol uniform.

(d) The awards committee shall review and investigate all reports of outstanding service and shall make recommendations to the patrol commander with respect thereto. The committee shall consider members of the Patrol for the awards created by this section when properly recommended by any individual having personal knowledge of an act, achievement or service believed to warrant the award of a decoration. No recommendation shall be made except by majority vote of all members of the committee. All recommendations of the committee shall be in writing and shall be forwarded to the patrol commander.

(e) Upon receipt of a recommendation of the committee, the patrol commander shall inquire into the facts of the matter and shall reduce his recommendation to writing. The patrol commander shall forward his recommendation, together with the recommendation of the committee, to the Secretary of Crime Control and Public Safety. The Secretary shall have final authority to approve or disapprove recommendations affecting the issuance of all awards except the award of honor. All recommendations for the award of honor shall be forwarded to the Governor for final approval or disapproval.

(f) The patrol commander shall, with the approval of the Secretary, establish all necessary rules and regulations to fully implement the provisions of this section and such rules and regulations shall include, but shall not be limited to, the following:

(1) Announcement of awards
(2) Presentation of awards
(3) Recording of awards
(4) Replacement of awards
(5) Authority to wear award insignias. (1967, c. 1179; 1971, c. 848; 1977, c. 70, s. 13.)

§ 20-187.2. Badges and service side arms of deceased or retiring members of State, city and county law-enforcement agencies; weapons of active members.

(a) Surviving spouses, or in the event such members die unsurvived by a spouse, surviving children of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies shall receive upon request and at no cost to them, the badge worn or carried by such deceased or retiring members. The governing body of a law-enforcement agency may, in its discretion, also award to a retiring member or surviving relative as provided herein, upon request, the service side arm of such deceased or retiring members, at a price determined by such governing body, upon securing a permit as required by G.S. 14-402 et seq. or 14-409.1 et seq., or without such permit provided the weapon shall have been rendered incapable of being fired. Governing body shall mean for county and local alcohol beverage control officers, the county or local board of alcoholic control; for all other law-enforcement officers with jurisdiction limited to a municipality or town, the city or town council; for all other law-enforcement officers with countywide jurisdiction, the board of county commissioners; for all State law-enforcement officers, the head of the department.

(b) Active members of North Carolina State law-enforcement agencies, upon change of type of weapons, may purchase the weapon worn or carried by such member at a price which shall be the average yield to the State from the sale of similar weapons during the preceding year. (1971, c. 669; 1973, c. 1424; 1975, c. 44; 1977, c. 548; 1979, c. 882; 1987, c. 122.)

Editor's Note. — Section 14-409.1, referred to in this section, was repealed by Session Laws 1995, c. 487, s. 4.

OPINIONS OF ATTORNEY GENERAL

Badge to Be Given to Officers Retiring on Disability. — Subsection (a) of this section requires law enforcement agencies to give an officer retiring upon disability retirement, with less than 20 years creditable service or only with five years creditable service, the badge worn by the officer. See opinion of Attorney General to Mr. Robert F. Thomas, Jr., Police Attorney, City of Charlotte, 50 N.C.A.G. 77 (1981).

§ 20-187.3. Quotas prohibited.

(a) The Secretary of Crime Control and Public Safety shall not make or permit to be made any order, rule, or regulation requiring the issuance of any minimum number of traffic citations, or ticket quotas, by any member or members of the State Highway Patrol. Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made. The provisions of G.S. 126-7 shall not apply to members of the State Highway Patrol. Members of the Highway Patrol shall, however, be subject to salary classes, ranges and longevity pay for service as are applicable to other State employees generally. Beginning July 1, 1985, and annually thereafter, each member of the Highway Patrol shall be granted a salary increase in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary range.

(b) The Secretary of Crime Control and Public Safety, subject to the availability of funds as authorized by the Director of the Budget, may place a member of the State Highway Patrol in any step in the salary range for the class to which the member is assigned based on the member's rank so that no member is in a step lower than others of the same rank who have held that rank for less time than that member. (1981, c. 429; 1983 (Reg. Sess., 1984), c. 1034, ss. 106, 107; c. 1116, s. 89.)

Editor's Note. — Session Laws 2009-451, s. 26.1A(c), provides: "The salary increase provisions of G.S. 20-187.3 are suspended for the 2009-2010 and 2010-2011 fiscal years."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 20-188. Duties of Highway Patrol.

The State Highway Patrol shall be subject to such orders, rules and regulations as may be adopted by the Secretary of Crime Control and Public Safety, with the approval of the Governor, and shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State. To this end, the members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the State regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the State, irrespective of county lines. The State Highway Patrol shall enforce the provisions of G.S. 14-399.

The State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The Secretary of Crime Control and Public Safety shall direct the officers and members of the State Highway Patrol in the performance of such other duties as may be required for the enforcement of the motor vehicle laws of the State.

Members of the State Highway Patrol, in addition to the duties, power and authority hereinbefore given, shall have the authority throughout the State of North Carolina of any police officer in respect to making arrests for any crimes committed in their presence and shall have authority to make arrests for any crime committed on any highway.

Regardless of territorial jurisdiction, any member of the State Highway Patrol who initiates an investigation of an accident or collision may not relinquish responsibility for completing the investigation, or for filing criminal charges as appropriate, without clear assurance that another law-enforcement officer or agency has fully undertaken responsibility, and in such cases he shall render reasonable assistance to the succeeding officer or agency if requested.

The State Highway Patrol recognizes the need to utilize private wrecker services to remove vehicles from public roadways as part of its public safety responsibility. In order to assure that this public safety responsibility is accomplished, the Troop Commander shall include on the Highway Patrol's rotation wrecker list only those wrecker services which agree in writing to impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage, and related fees charged may not be greater than fees charged for the same service for nonrotation calls that provide the same service, labor, and conditions. (1929, c. 218, s. 4; 1933, c. 214, ss. 1, 2; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36; 1945, c. 1048; 1947, c. 1067, s. 20; 1973, c. 689; 1975, c. 716, s. 5; 1977, c. 70, ss. 10, 13; c. 887, s. 3; 2009-461, s. 3.)

Editor's Note. — Session Laws 2009-461, ss. 1 and 2, provide: "SECTION 1. Notwithstanding the authority of the Secretary of Crime Control and Public Safety to adopt rules for the maintenance and operation of a Highway Patrol rotation wrecker system, the amendments to 14A NCAC 09H.0321(10), which became effective on July 18, 2008, are void and unenforceable to the extent such amendments:

"(1) Limit submission of initial applications and reapplications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.

"(2) Limit vehicle storage fees to the maximum allowed by G.S. 20-28.3.

"(3) Require that towing and recovery fees be within fifteen percent (15%) of the median price charged within the applicable Highway Patrol Troop.

"Notwithstanding the limitations set out in this section, the Highway Patrol may require that wrecker services, when responding to rotation wrecker calls, charge reasonable fees for services rendered and that any fee charged for rotation services not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions.

"SECTION 2. The Secretary of Crime Control and Public Safety shall adopt amendments to 14A NCAC 09H.0321(10) to conform to the requirements of this act."

Effect of Amendments. — Session Laws 2009-461, s. 3, effective August 7, 2009, added the last paragraph.

Legal Periodicals. — As to power of highway patrolman to make arrests, see 23 N.C.L. Rev. 338 (1945).

CASE NOTES

When acting as such, a State highway patrolman is a public officer within the purview of G.S. 14-223, relating to resisting officers. State v. Powell, 10 N.C. App. 443, 179 S.E.2d 153 (1971).

Right to Employ Reasonable Means in Fulfilling Duties. — By this section the Patrol is directed to "enforce all laws and regulations respecting travel and use of vehicles upon the highways of the State." Imposition of this duty implies the right to employ reasonable means in a reasonable manner in fulfilling it. Collins v. Christenberry, 6 N.C. App. 504, 170 S.E.2d 515 (1969).

Trial court did not err in granting summary judgment to the governor, state public safety agency, state highway patrol, and certain unidentified persons, and denying the wrecker service owner's motion for summary judgment on the wrecker service owner's declaratory judgment action seeking a determination that regulations used to remove his wrecker service business from the state's Wrecker Rotation Services List were illegal and that the regulations were preempted by federal law; the trial court had the authority to declare that the regulations were not illegal because the General Assembly granted to the state public safety agency the power to direct the state highway patrol to establish regulations for private wrecker services. Ramey v. Easley, 178 N.C. App. 197, 632 S.E.2d 178, 2006 N.C. App. LEXIS 1308 (2006).

The use of an airplane by highway patrolmen to locate a person sought to be arrested by them is not a departure from the terms of their employment. Galloway v. Department of Motor Vehicles, 231 N.C. 447, 57 S.E.2d 799 (1950).

Care Required of Officer in Pursuit of Lawbreaker. — It is not held that an officer, when in pursuit of a lawbreaker, is under no obligation to exercise a reasonable degree of care to avoid injury to others who may be on the public roads and streets. It is held that, when so engaged, he is not to be deemed negligent merely because he fails to observe the requirements of the Motor Vehicle Act. His conduct is to be examined and tested by another standard. He is required to observe the care which a reasonably prudent man would exercise in the discharge of official duties of a like nature under like circumstances. Collins v. Christenberry, 6 N.C. App. 504, 170 S.E.2d 515 (1969).

Arrest Without Warrant. — A highway patrolman apprehending a person driving a motor vehicle on the public highway while under the influence of intoxicating liquor is authorized, by virtue of the provisions of this section and subdivision (1) of former G.S. 15-41 [now G.S. 15A-401(b)] to arrest such person without a warrant, and such arrest is legal. State v. Broome, 269 N.C. 661, 153 S.E.2d 384 (1967).

The word "accused" in this section is used in the generic sense and does not import that the person to be arrested must have been accused of crime by judicial procedure. Galloway v. Department of Motor Vehicles, 231 N.C. 447, 57 S.E.2d 799 (1950).

Armed robbery is a crime of violence within the meaning of this section. Galloway v. Department of Motor Vehicles, 231 N.C. 447, 57 S.E.2d 799 (1950).

Arrest of Intruder in Home. — Where a highway patrolman is advised by a person that an armed convict had come to her home, made threats, and demanded food, such patrolman is given authority under this section to arrest such convict. Galloway v. Department of Motor Vehicles, 231 N.C. 447, 57 S.E.2d 799 (1950).

Cited in State v. Green, 103 N.C. App. 38, 404 S.E.2d 363 (1991).

§ 20-189. Patrolmen assigned to Governor's office.

The Secretary of Crime Control and Public Safety, at the request of the Governor, shall assign and attach two members of the State Highway Patrol to the office of the Governor, there to be assigned such duties and perform such services as the Governor may direct. The salary of the State highway patrolmen so assigned to the office of the Governor shall be paid from appropriations made to the office of the Governor and shall be fixed in an amount to be determined by the Governor. (1941, cc. 23, 36; 1965, c. 1159; 1977, c. 70, s. 13; 1983, c. 717, s. 6; 1985 (Reg. Sess., 1986), c. 955, ss. 2, 3; 2006-203, s. 15.)

§ 20-190. Uniforms; motor vehicles and arms; expense incurred; color of vehicle.

The Department of Crime Control and Public Safety shall adopt some distinguishing uniform for the members of said State Highway Patrol, and furnish each member of the Patrol with an adequate number of said uniforms and each member of said Patrol force when on duty shall be dressed in said uniform. The Department of Crime Control and Public Safety shall likewise furnish each member of the Patrol with a suitable motor vehicle, and necessary arms, and provide for all reasonable expense incurred by said Patrol while on duty, provided, that not less than eighty-three percent (83%) of the number of motor vehicles operated on the highways of the State by members of the State Highway Patrol shall be painted a uniform color of black and silver. (1929, c. 218, s. 5; 1941, c. 36; 1955, c. 1132, ss. 1, 11/4, 13/4; 1957, c. 478, s. 1; c. 673, s. 1; 1961, c. 342; 1975, c. 716, s. 5; 1977, c. 70, s. 15; 1979, c. 229.)

§ 20-190.1. Patrol vehicles to have sirens; sounding siren.

Every motor vehicle operated on the highways of the State by officers and members of the State Highway Patrol shall be equipped with a siren. Whenever any such officer or member operating any unmarked car shall overtake another vehicle on the highway after sunset of any day and before sunrise for the purpose of stopping the same or apprehending the driver thereof, he shall sound said siren before stopping such other vehicle. (1957, c. 478, s. 11/2.)

§ 20-190.2. Signs showing highways patrolled by unmarked vehicles.

The Department of Transportation shall erect or cause to be erected signs at all points where paved highways enter this State from adjacent states stating that the highways are patrolled by unmarked police vehicles. (1957, c. 673, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

§ 20-190.3. Assignment of new highway patrol cars.

All new highway patrol cars, whether marked or unmarked, placed in service after July 1, 1985, shall be assigned to all members of the Highway Patrol. (1985, c. 757, s. 165; 1987, c. 738, s. 122; 1989, c. 752, s. 114.)

§ 20-191. Use of facilities.

Office space and other equipment and facilities of the Division of Motor Vehicles, Department of Transportation, presently being used by the State Highway Patrol shall continue to be used by the Patrol, and joint use of space, equipment and facilities between any division of the Department of Transportation and the State Highway Patrol may continue, unless such arrangements are changed by agreements between the Secretary of Crime Control and Public Safety and the Secretary of Transportation. (1929, c. 218, s. 6; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 2; 1975, c. 716, s. 5; 1977, c. 70, s. 11.)

§ 20-192. Shifting of patrolmen from one district to another.

The commanding officer of the State Highway Patrol under such rules and regulations as the Department of Crime Control and Public Safety may prescribe shall have authority from time to time to shift the forces from one district to another, or to consolidate more than one district force at any point for special purposes. Whenever a member of the State Highway Patrol is transferred from one point to another for the convenience of the State or otherwise than upon the request of the patrolman, the Department shall be responsible for transporting the household goods, furniture and personal apparel of the patrolman and members of his household. (1929, c. 218, s. 7; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 3; 1951, c. 285; 1975, c. 716, s. 5; 1977, c. 70, s. 15.)

§ 20-193: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 18.

§ 20-194. Expense of administration; defense of members and other State law-enforcement officers in civil actions; payment of judgments.

(a) All expenses incurred in carrying out the provisions of this Article shall be paid out of the highway fund.

(b) In the event that a member of the Highway Patrol or any other State law-enforcement officer is sued in a civil action as an individual for acts occurring while such member was alleged to be acting within the course and scope of his office, employment, service, agency or authority, which was alleged to be a proximate cause of the injury or damage complained of, the Attorney General is hereby authorized to defend such employee through the use of a member of his staff or, in his discretion, employ private counsel, subject to the provisions of Article 31A of Chapter 143 and G.S. 147-17. Any judgment rendered as a result of said civil action against such member of the Highway Patrol or other State law-enforcement officer, for acts alleged to be committed within the course and scope of his office, employment, service, agency or authority shall be paid as an expense of administration up to the limit provided in the Tort Claims Act.

(c) The coverage afforded under this Article shall be excess coverage over any commercial liability insurance up to the limit of the Tort Claims Act. (1929, c. 218, s. 9; 1941, c. 36; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1323; 1975, c. 210; 1977, c. 70, s. 12.)

§ 20-195. Cooperation between Patrol and local officers.

The Secretary of Crime Control and Public Safety with the approval of the Governor, through the State Highway Patrol Division, shall encourage the cooperation between the Highway Patrol and the several municipal and county peace officers of the State for the enforcement of all traffic laws and the proper administration of the Uniform Drivers' License Law, and arrangements for compensation of special services rendered by such local officers out of the funds allotted to the State Highway Patrol Division may be made, subject to the approval of the Director of the Budget. (1935, c. 324, s. 5; 1939, c. 387, s. 3; 1941, c. 36; 1977, c. 70, ss. 13, 14.)

§ 20-196. Statewide radio system authorized; use of telephone lines in emergencies.

The Secretary of Crime Control and Public Safety, through the State Highway Patrol Division is hereby authorized and directed to set up and maintain a statewide radio system, with adequate broadcasting stations so situate as to make the service available to all parts of the State for the purpose of maintaining radio contact with the members of the State Highway Patrol and other officers of the State, to the end that the traffic laws upon the highways may be more adequately enforced and that the criminal use of the highways may be prevented. The Secretary of Crime Control and Public Safety, through the State Highway Patrol Division, is hereby authorized to establish a plan of operation in accordance with Federal Communication Commission rules so that all certified law-enforcement officers within the State may use the law enforcement emergency frequency of 155.475MHz.

The Secretary of Crime Control and Public Safety is likewise authorized and empowered to arrange with the various telephone companies of the State for the use of their lines for emergency calls by the members of the State Highway Patrol, if it shall be found practicable to arrange apparatus for temporary contact with said telephone circuits along the highways of the State.

In order to make this service more generally useful, the various boards of county commissioners and the governing boards of the various cities and towns are hereby authorized and empowered to provide radio receiving sets in the offices and vehicles of their various officers, and such expenditures are declared to be a legal expenditure of any funds that may be available for police protection. (1935, c. 324, s. 6; 1941, c. 36; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 70, ss. 13, 14; c. 464, s. 34; 1983, c. 717, s. 7; 1987, c. 525.)

§ 20-196.1: Repealed by Session Laws 1998-212, s. 19.6(a), effective December 1, 1998.

§ 20-196.2. Use of aircraft to discover certain motor vehicle violations; declaration of policy.

The State Highway Patrol is hereby permitted the use of aircraft to discover violations of Part 10 of Article 3 of Chapter 20 of the General Statutes relating to operation of motor vehicles and rules of the road. It is hereby declared the public policy of North Carolina that the aircraft should be used primarily for accident prevention and should also be used incident to the issuance of warning citations in accordance with the provisions of G.S. 20-183. (1967, c. 513; 1998-212, s. 19.6(b).)

§ 20-196.3. Who may hold supervisory positions over sworn members of the Patrol.

Notwithstanding any other provision of the General Statutes of North Carolina, it shall be unlawful for any person other than the Governor and the Secretary of Crime Control and Public Safety and other than a uniformed member of the North Carolina State Highway Patrol who has met all requirements for employment within the Patrol, including but not limited to completion of the basic Patrol school, to hold any supervisory position over sworn members of the Patrol. (1975, c. 47; 1977, c. 70, s. 14.1; 2002-159, ss. 31.5(a), (b); 2002-190, s. 9.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-196.4. Oversized and hazardous shipment escort fee.

(a) Every person, firm, corporation, or entity required by the North Carolina Department of Transportation or any federal agency or commission to have a law enforcement escort provided by the State Highway Patrol for the transport of any oversized load or hazardous shipment by road or rail shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(b) If the State Highway Patrol provides an escort to accompany the transport of oversized loads or hazardous shipments by road or rail at the request of any person, firm, corporation, or entity that is not required to have a law enforcement escort pursuant to subsection (a) of this section, then the requester shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(c) The Department of Crime Control and Public Safety shall comply with the provisions of G.S. 12-3.1(a)(2) when establishing fees to implement this section.

(d) All fees collected pursuant to this section shall be placed in a special Escort Fee Account and shall remain unencumbered and unexpended until appropriated by the General Assembly.

(e) The Department shall report quarterly on the funds in the special account to the Chairs of the Joint Legislative Transportation Oversight Committee, to the Chairs of the House of Representatives Appropriations Subcommittee on Transportation and the Senate Appropriations Subcommittee on Department of Transportation, and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety. (2002-126, s. 26.17(a).)

ARTICLE 5.

Enforcement of Collection of Judgments against Irresponsible Drivers of Motor Vehicles.

§§ 20-197 through 20-211: Repealed by Session Laws 1947, c. 1006, s. 58.

ARTICLE 6.

Giving Publicity to Highway Traffic Laws through the Public Schools.

§§ 20-212 through 20-215: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 19.

ARTICLE 6A.

Motor Carriers of Migratory Farm Workers.

§ 20-215.1. Definitions.

The following definitions apply in this Article:

(1) Migratory farm worker. — An individual who is employed in agriculture.

(2) Motor carrier of migratory farm workers. — A person who for compensation transports at any one time in North Carolina five or more migratory farm workers to or from their employment by any motor vehicle, other than a passenger automobile or station wagon. The term does not include any of the following:

  a. A migratory farm worker who is transporting his or her immediate family.

  b. A carrier of passengers regulated by the North Carolina Utilities Commission or the United States Department of Transportation.

  c. The transportation of migratory farm workers on a vehicle owned by a farmer when the migratory farm workers are employed or to be employed by the farmer to work on a farm owned or controlled by the farmer.

(3) Repealed by Session Laws 1973, c. 1330, s. 39. (1961, c. 505, s. 1; 1973, c. 1330, s. 39; 1995 (Reg. Sess., 1996), c. 756, s. 17.)

Cross References. — For definitions applicable throughout this Chapter, see G.S. 20-4.01.

§ 20-215.2. Power to regulate; rules and regulations establishing minimum standards.

Notwithstanding any other provisions of this Chapter the North Carolina Division of Motor Vehicles, hereinafter referred to as "Division," is hereby vested with the power and duty to make and enforce reasonable rules and regulations applicable to motor carriers of migratory farm workers to and from their places of employment. The rules promulgated shall establish minimum standards:

(1) For the construction and equipment of such vehicles, including coupling devices, lighting equipment, exhaust systems, rear vision mirrors, brakes, steering mechanisms, tires, windshield wipers and warning devices.

(2) For the operation of such vehicles, including driving rules, distribution of passengers and load, maximum hours of service for drivers, minimum requirements of age and skill of drivers, physical conditions

of drivers and permits, licenses or other credentials required of drivers.

(3) For the safety and comfort of passengers in such vehicles, including emergency kits, fire extinguishers, first-aid equipment, sidewalls, seating accommodations, tail gates or doors, rest and meal stops, maximum number of passengers, and safe means of ingress and egress. (1961, c. 505, s. 2; 1975, c. 716, s. 5.)

§ 20-215.3: Repealed by Session Laws 1985, c. 454, s. 8.

§ 20-215.4. Violation of regulations a misdemeanor.

The violation of any rule or regulation promulgated by the Division hereunder by any person, firm or corporation shall be a Class 3 misdemeanor. (1961, c. 505, s. 4; 1975, c. 716, s. 5; 1993, c. 539, s. 381; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-215.5. Duties and powers of law-enforcement officers.

It shall be the duty of the law-enforcement officers of the State, and of each county, city or town, to enforce the rules promulgated hereunder in their respective jurisdictions; and such officers shall have the power to stop any motor vehicle upon the highways of this State for the purpose of determining whether or not such motor vehicle is being operated in violation of such rules. (1961, c. 505, s. 5.)

ARTICLE 7.

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-216. Passing horses or other draft animals.

Any person operating a motor vehicle shall use reasonable care when approaching or passing a horse or other draft animal whether ridden or otherwise under control. (1917, c. 140, s. 15; C.S., s. 2616; 1969, c. 401.)

CASE NOTES

The laws with respect to passing animals, with the exception of establishing a speed limit, are to a great extent an embodiment of general principles of law applicable to motor vehicles when operated on the highway and in places where their use is likely to be a source of danger to others. Tudor v. Bowen, 152 N.C. 441, 67 S.E. 1015 (1910); Gaskins v. Hancock, 156 N.C. 56, 72 S.E. 80 (1911); Curry v. Fleer, 157 N.C. 16, 72 S.E. 626 (1911).

Cited in Goss v. Williams, 196 N.C. 213, 145 S.E. 169 (1928); York v. York, 212 N.C. 695, 194 S.E. 486 (1938).

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

(a) When a school bus is displaying its mechanical stop signal or flashing red lights and the bus is stopped for the purpose of receiving or discharging passengers, the driver of any other vehicle that approaches the school bus from any direction on the same street, highway, or public vehicular area shall bring that other vehicle to a full stop and shall remain stopped. The driver of the other vehicle shall not proceed to move, pass, or attempt to pass the school bus until after the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has started to move.

(b) For the purpose of this section, a school bus includes a public school bus transporting children or school personnel, a public school bus transporting senior citizens under G.S. 115C-243, or a privately owned bus transporting children. This section applies only in the event the school bus bears upon the front and rear a plainly visible sign containing the words "school bus."

(c) Notwithstanding subsection (a) of this section, the driver of a vehicle traveling in the opposite direction from the school bus, upon any road, highway or city street that has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space (including a center lane for left turns if the roadway consists of at least four more lanes) or by a physical barrier, need not stop upon meeting and passing any school bus that has stopped in the roadway across the dividing space or physical barrier.

(d) It shall be unlawful for any school bus driver to stop and receive or discharge passengers or for any principal or superintendent of any school, routing a school bus, to authorize the driver of any school bus to stop and receive or discharge passengers upon any roadway described by subsection (c) of this section where passengers would be required to cross the roadway to reach their destination or to board the bus; provided, that passengers may be discharged or received at points where pedestrians and vehicular traffic are controlled by adequate stop-and-go traffic signals.

(e) Except as provided in subsection (g) of this section, any person violating this section shall be guilty of a Class 1 misdemeanor. A person who violates subsection (a) of this section shall not receive a prayer for judgment continued under any circumstances.

(f) Expired.

(g) Any person who willfully violates subsection (a) of this section and strikes any person shall be guilty of a Class I felony. Any person who willfully violates subsection (a) of this section and strikes any person, resulting in the death of that person, shall be guilty of a Class H felony.

(h) Automated camera and video recording systems may be used to detect and prosecute violations of this section. Any photograph or video recorded by a camera or video recording system shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section. (1925, c. 265; 1943, c. 767; 1947, c. 527; 1955, c. 1365; 1959, c. 909; 1965, c. 370; 1969, c. 952; 1971, c. 245, s. 1; 1973, c. 1330, s. 35; 1977, 2nd Sess., c. 1280, s. 4; 1979, 2nd Sess., c. 1323; 1983, c. 779, s. 1; 1985, c. 700, s. 1; 1991, c. 290, s. 1; 1993, c. 539, s. 382; 1994, Ex. Sess., c. 24, s. 14(c); 1998-149, s. 10; 2005-204, s. 1; 2006-160, s. 1; 2006-259, s. 11(a); 2007-382, s. 1; 2009-147, ss. 1, 2.)

Effect of Amendments. — Session Laws 2009-147, ss. 1 and 2, effective December 1, 2009, and applicable to offenses committed on or after that date, added the second sentence in subsection (g) and added subsection (h).

CASE NOTES

This section is a safety statute, designed for the protection of life, limb and property. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

This section is designed for the protection of life, limb and property. Slade v. New Hanover County Bd. of Educ., 10 N.C. App. 287, 178 S.E.2d 316, cert. denied, 278 N.C. 104, 179 S.E.2d 453 (1971).

This section applies to passing a school bus from either direction, from the rear or from the front. State v. Webb, 210 N.C. 350, 186 S.E. 241 (1936).

No Duty to Stop When Bus Is Across

Median. — This section imposes no duty on a motorist to stop for a stopped school bus across the median from him on a divided highway. Holder v. Moore, 22 N.C. App. 134, 205 S.E.2d 732 (1974).

A violation of this section is negligence per se, but such violation must be proximate cause contributing to injury and death of intestate to warrant recovery on that ground. Morgan v. Carolina Coach Co., 225 N.C. 668, 36 S.E.2d 263 (1945).

Culpable Negligence. — The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or a heedless indifference to the safety of others. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

Evidence Held Sufficient. — The state's evidence regarding the identity of driver of blue car which passed a stopped school bus in violation of this section held sufficient. State v. Williams, 90 N.C. App. 120, 367 S.E.2d 345 (1988).

Evidence Failing to Show Violation of This Section. — The evidence tended to show that a school bus and two following cars stopped on the right side of the highway, that two children alighted, one of whom ran immediately in front of the bus across the highway, and the other, a boy eight years old waited until the three vehicles were in motion and crossed the highway after the third vehicle had passed, and was struck by defendant's truck operated by defendant's agent which was traveling in the opposite direction about 30 miles per hour, and which failed to give any warning of its approach and failed to reduce speed prior to the collision. It was held that, although the evidence failed to show a violation of the letter of this section, since the school bus was in motion and its stop signal had been withdrawn prior to the impact, the evidence was sufficient to be submitted to the jury upon the issues of the negligence of the driver of the truck and the contributory negligence of defendant's intestate. Hughes v. Thayer, 229 N.C. 773, 51 S.E.2d 488 (1949).

Applied in Reeves v. Campbell, 264 N.C. 224, 141 S.E.2d 296 (1965).

Cited in In re Fuller, 345 N.C. 157, 478 S.E.2d 641 (1996).

OPINIONS OF ATTORNEY GENERAL

Public Vehicular Area. — This section has no application to a "public vehicular area" as defined by G.S. 20-4.01(32). See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, 57 N.C.A.G. 10 (Mar. 9, 1987).

Passing a stopped school bus displaying a mechanical stop signal while receiving or discharging passengers on a driveway on school property, which is not a street or highway, does not violate this section. See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, 57 N.C.A.G. 10 (Mar. 9, 1987).

§ 20-217.1: Repealed by Session Laws 1983, c. 779, s. 2.

§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.

(a) Qualifications. — No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. — It is unlawful to drive a school bus occupied by one or more child passengers over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus occupied by one or more child passengers over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. — A person who violates this section commits a Class 3 misdemeanor. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595; 1971, c. 293; 1977, c. 791, ss. 1, 2; c. 1102; 1979, c. 31, ss. 1, 2; c. 667, s. 36; 1981, c. 30; 1987, c. 337, s. 1; 1989, c. 558, s. 1; c. 771, s. 6; 1991, c. 726, s. 22; 1993, c. 217, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 20; 2009-550, s. 3.2.)

Cross References. — As to selection and employment of school bus drivers, see G.S. 115C-245.

Effect of Amendments. — Session Laws 2009-550, s. 3.2, effective August 28, 2009, in subsection (a), substituted "one or more child passengers" for "children"; and in subsection (b), substituted "occupied by one or more child passengers" for "loaded with children" twice.

CASE NOTES

Cited in Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960).

OPINIONS OF ATTORNEY GENERAL

This section as rewritten by Session Laws 1977, c. 791, contained the correct version of the statute. Opinion of Attorney General to Major D.R. Emory, N.C. State Highway Patrol, 47 N.C.A.G. 75 (1977), prior to the 1979 and 1981 amendments.

§ 20-218.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 21.

§ 20-218.2. Speed limit for nonprofit activity buses.

It is unlawful to drive an activity bus that is owned by a nonprofit organization and is transporting persons in connection with nonprofit activities over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour. A person who violates this section commits a Class 3 misdemeanor. (1969, c. 1000, s. 2; 1987, c. 337, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 23.)

§ 20-219: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 24.

§ 20-219.1: Repealed by Session Laws 1971, c. 294, s. 2.

Cross References. — For present provision as to removal of vehicles parked or left standing on highways, see G.S. 20-161.

§ 20-219.2. Removal of unauthorized vehicles from private lots.

(a) It shall be unlawful for any person other than the owner or lessee of a privately owned or leased parking space to park a motor or other vehicle in such private parking space without the express permission of the owner or lessee of such space; provided, that such private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto and the parking spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner; a vehicle parked in a privately owned parking space in violation of this section may be removed from such space upon the written request of the parking space owner or lessee to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges. Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any person violating any of the provisions of this section shall be guilty of a Class 3 misdemeanor and upon conviction shall be only fined not more than ten dollars ($10.00) in the discretion of the court.

(c) This section shall apply only to the Counties of Craven, Dare, Forsyth, Gaston, Guilford, New Hanover, Orange, Richmond, Robeson, Wake, Wilson and to the Cities of Durham, Jacksonville, Charlotte and Fayetteville. (1969, cc. 173, 288; 1971, c. 986; 1973, c. 183; c. 981, s. 1; c. 1330, s. 36; 1975, c. 575; 1979, c. 380; 1979, 2nd Sess., c. 1119; 1981 (Reg. Sess., 1982), c. 1251, s. 3; 1989, c. 417; c. 644, s. 1; 1993, c. 539, s. 383; 1994, Ex. Sess., c. 24, s. 14(c); 2008-68, s. 1.)

Local Modification. — Forsyth: 1983, c. 459.

Editor's Note. — This section was originally codified as G.S. 20-162.2. It was transferred to its present position by Session Laws 1973, c. 1330, s. 36.

Effect of Amendments. — Session Laws 2008-68, s. 1, effective December 1, 2008, and applicable to offenses committed on or after that date, inserted "Richmond" in subsection (c).

CASE NOTES

Cited in Kirschbaum v. McLaurin Parking Co., 188 N.C. App. 782, 656 S.E.2d 683, 2008 N.C. App. LEXIS 258 (2008).

§ 20-219.3. Removal of unauthorized vehicles from gasoline service station premises.

(a) No motor vehicle shall be left for more than 48 hours upon the premises of any gasoline service station without the consent of the owner or operator of the service station.

(b) The registered owner of any motor vehicle left unattended upon the premises of a service station in violation of subsection (a) shall be given notice by the owner or operator of said station of said violation. The notice given shall be by certified mail return receipt requested addressed to the registered owner of the motor vehicle.

(c) Upon the expiration of 10 days from the return of the receipt showing that the notice was received by the addressee, such vehicle left on the premises of a service station in violation of this section may be removed from the station premises to a place of storage and the registered owner of such vehicle shall become liable for the reasonable removal and storage charges and the vehicle subject to the storage lien created by G.S. 44A-1 et seq. Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(d) In the alternative, the station owner or operator may charge for storage, assert a lien, and dispose of the vehicle under the terms of G.S. 44A-4(b) through (g). The proceeds from the sale of the vehicle shall be disbursed as provided in G.S. 44A-5. (1971, c. 1220; 1973, c. 1330, s. 36; 1989, c. 644, s. 2.)

Editor's Note. — This section was originally codified as G.S. 20-162.3. It was transferred to its present position by Session Laws 1973, c. 1330, s. 36.

Session Laws 1973, c. 720, s. 2, which enacted G.S. 20-137.6 to 20-137.14, relating to abandoned and derelict vehicles, provided that the act would not repeal or modify G.S. 20-162.3 (now G.S. 20-219.3).

§ 20-219.4. Public vehicular area designated.

(a) Any area of private property used for vehicular traffic may be designated by the property owner as a public vehicular area by registering the area with the Department of Transportation and by erecting signs identifying the area as a public vehicular area in conformity with rules adopted by the Department of Transportation.

(b) The Department of Transportation shall serve as a registry for registrations of public vehicular areas permitted under this section. The Department shall adopt rules for registration requirements and procedures. The Department shall also adopt rules governing the size and locations of signs designating public vehicular areas by private property owners in accordance with this section. These rules shall ensure that signs erected pursuant to this provision shall be placed so as to provide reasonable notice to motorists.

(c) The Department shall charge a fee not to exceed five hundred dollars ($500.00) per registration request authorized by this section. The Department may also charge the reasonable cost for furnishing a certified copy of a registration when requested. Funds collected under this subsection shall be used to cover the cost of maintaining the registry. (2001-441, s. 2.)

§§ 20-219.5 through 20-219.8: Reserved for future codification purposes.

ARTICLE 7A.

Post-towing Procedures.

§ 20-219.9. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Tow" in any of its forms includes to remove a vehicle by any means including towing and to store the vehicle;

(2) "Tower" means the person who towed the vehicle;

(3) "Towing fee" means the fee charged for towing and storing. (1983, c. 420, s. 2.)

Cross References. — For provision authorizing certain private colleges or universities to provide alternative post-towing procedures, see G.S. 116-229.

§ 20-219.10. Coverage of Article.

(a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution.

(b) A person who authorizes the towing of a vehicle covered by this Article, G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303 or 160A-303.2 is a legal possessor of the vehicle within the meaning of G.S. 44A-1(1). (1983, c. 420, s. 2; 1989, c. 743, s. 3; 1997-379, s. 1.7.)

Editor's Note. — Session Laws 1989, c. 743, which amended this section, provided in s. 4 that the act would not affect the validity of any ordinance passed prior to October 1, 1989.

§ 20-219.11. Notice and probable cause hearing.

(a) Whenever a vehicle with a valid registration plate or registration is towed as provided in G.S. 20-219.10, the authorizing person shall immediately notify the last known registered owner of the vehicle of the following:

(1) A description of the vehicle;

(2) The place where the vehicle is stored;

(3) The violation with which the owner is charged, if any;

(4) The procedure the owner must follow to have the vehicle returned to him; and

(5) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this State, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he or his agent waives this notice in writing.

(b) Whenever a vehicle with neither a valid registration plate nor registration is towed as provided in G.S. 20-219.10, the authorizing person shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in subsection (a). Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this subsection, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at least seven days before the towing actually occurred; except, no pretowing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.

(c) The owner or any other person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate in the county where the vehicle was towed. If there is more than one magistrate's office in that county, the request may be filed with the magistrate in the warrant-issuing office in the county seat or in any other office designated to receive requests by the chief district court judge. The magistrate shall set the hearing within 72 hours of his receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing.

(d) The owner, the tower, the person who authorized the towing, and any other interested parties may present evidence at the hearing. The person authorizing the towing and the tower may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.

(e) The only issue at this hearing is whether or not probable cause existed for the towing. If the magistrate finds that probable cause did exist, the tower's lien continues. If the magistrate finds that probable cause did not exist, the tower's lien is extinguished.

(f) Any aggrieved party may appeal the magistrate's decision to district court. (1983, c. 420, s. 2.)

§ 20-219.12. Option to pay or post bond.

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of his vehicle by:

(1) Paying the towing fee, or
(2) Posting a bond for double the amount of the towing fee. (1983, c. 420, s. 2.)

§ 20-219.13. Hearing on lien.

The tower may seek to enforce his lien or the owner may seek to contest the lien pursuant to Chapter 44A. (1983, c. 420, s. 2.)

§ 20-219.14. Payment to tower guaranteed.

Every agency whose law-enforcement officers act pursuant to this Article, G.S. 115D-21, 116-44.4, 116-229, 153A-132, or 160A-303 shall by contract or rules provide compensation to the tower if a court finds no probable cause existed for the towing. (1983, c. 420, s. 2.)

ARTICLE 8.

Habitual Offenders.

§§ 20-220 through 20-231: Repealed by Session Laws 1977, c. 243, s. 1.

ARTICLE 8A.

Issuance of New Licenses to Persons Adjudged Habitual Offenders.

§ 20-231.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 25.

ARTICLE 9.

Motor Vehicle Safety and Financial Responsibility Act.

§§ 20-232 through 20-279: Repealed by Session Laws 1953, c. 1300, s. 35.

Editor's Note. — The repealing act is codified as G.S. 20-279.35. For law now effective, see G.S. 20-279.1 to 20-279.39. And see G.S. 20-309 to 20-319.

Former G.S. 20-232 has been reenacted and renumbered as G.S. 20-17.1.

ARTICLE 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.1. Definitions.

The following words and phrases, when used in this Article, shall, for the purposes of this Article, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Repealed by Session Laws 1973, c. 1330, s. 39.
(2) Repealed by Session Laws 1991, c. 726, s. 20.
(3) "Judgment": Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.
(4) to (6) Repealed by Session Laws 1973, c. 1330, s. 39.
(7) "Nonresident's operating privilege": The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by him of a motor vehicle in this State.
(8) to (10) Repealed by Session Laws 1973, c. 1330, s. 39.
(11) "Proof of financial responsibility": Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. Nothing contained herein shall prevent an insurer and an insured from entering into a contract, not affecting third parties, providing for a deductible as to property damage at a rate approved by the Commissioner of Insurance.
(12) Repealed by Session Laws 1973, c. 1330, s. 39. (1953, c. 1300, s. 1; 1955, c. 1152, s. 3; c. 1355; 1967, c. 277, s. 1; 1971, c. 1205, s. 1; 1973,

c. 745, s. 1; c. 1330, s. 39; 1979, c. 832, s. 1; 1991, c. 469, s. 1; c. 726, s. 20; 1999-228, s. 1.)

Cross References. — For definitions applicable throughout this Chapter, see G.S. 20-4.01. As to Vehicle Financial Responsibility Act of 1957, see G.S. 20-309 to 20-319. As to liability insurance covering negligent operation of municipal vehicles, see G.S. 160A-485.

Legal Periodicals. — For comment on this Article, see 31 N.C.L. Rev. 420 (1953).

For comment on insurer's liability for intentionally inflicted injuries, see 43 N.C.L. Rev. 436 (1965).

For case law survey as to automobile liability insurance, see 44 N.C.L. Rev. 1023 (1966).

For case law survey as to insurance, see 45 N.C.L. Rev. 955 (1967).

For comment on Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967), cited in the note below, see 46 N.C.L. Rev. 433 (1968).

For comment, "Compulsory Motor Vehicle Liability Insurance: Joinder of Insurers as Defendants in Actions Arising out of Automobile Accidents," see 14 Wake Forest L. Rev. 200 (1978).

For note on use of the family purpose doctrine when no outsiders are involved, in light of Carver v. Carver, 310 N.C. 669, 314 S.E.2d 739 (1984) see 21 Wake Forest L. Rev. 243 (1985).

For note, "Sutton v. Aetna Casualty & Surety Co.: The North Carolina Supreme Court Approves Stacking of Underinsured Motorist Coverage—Will Uninsured Coverage Follow?," see 68 N.C. L. Rev. 1281 (1990).

For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

CASE NOTES

This Chapter Supersedes Section 58-3-10. — Section 58-3-10, adopted in 1901, falls within Chapter 58, Insurance, Article 3, General Regulations for Insurance. As an earlier and more general statement of insurance law, it is superseded with respect to automobile liability insurance by Chapter 20, Motor Vehicles, specifically by Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953, and Article 13, the Vehicle Financial Responsibility Act of 1957. Chapter 20 represents a complete and comprehensive legislative scheme for the regulation of motor vehicles, and as such, its insurance provisions regarding automobiles prevail over the more general insurance regulations of Chapter 58. Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87, cert. denied, 329 N.C. 499, 407 S.E.2d 539 (1991).

The object of the Motor Vehicle Safety and Financial Responsibility Act was to provide protection to the public. Indiana Lumbermens Mut. Ins. Co. v. Parton, 147 F. Supp. 887 (M.D.N.C. 1957).

It is the purpose of the Financial Responsibility Act to provide protection for persons injured or damaged by the negligent operation of automobiles. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962); Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

The purpose of the Financial Responsibility Law is to protect victims of automobile accidents. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967).

The purpose of the Financial Responsibility Act is to provide protection from damages or injuries resulting from the negligent operation of automobiles. Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970).

The purpose of the Financial Responsibility Act is to provide protection to the public from damages resulting from the negligent operation of automobiles by irresponsible persons. Nationwide Mut. Ins. Co. v. Fireman's Fund Ins. Co., 279 N.C. 240, 182 S.E.2d 571 (1971); Haight v. Travelers/Aetna Property Cas. Corp., 132 N.C. App. 673, 514 S.E.2d 102 (1999).

Operators Must Be Financially Responsible. — The legislatures of 1953 and 1955 required operators of motor vehicles in this State to be "financially responsible," and proof of financial responsibility is defined in this section. Iowa Mut. Ins. Co. v. Fred M. Simmons, Inc., 262 N.C. 691, 138 S.E.2d 512 (1964).

This Article and Article 13 to Be Construed in Pari Materia. — The Motor Vehicle Safety and Financial Responsibility Act of 1953 applies to drivers whose licenses have been suspended and relates to the restoration of drivers' licenses, while the Vehicle Financial Responsibility Act of 1957 applies to all motor vehicle owners and relates to the registration of motor vehicles. The two acts are complementary, and the latter does not repeal or modify the former but incorporates portions of the former by reference, and the two acts are to be construed in pari materia so as to harmonize them and give effect to both. Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961).

This Article and Article 13 of this Chapter are to be construed together so as to harmonize their provisions and to effectuate the purpose of the legislature. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

The 1953 Act, found at G.S. 20-279.1 to 20-279.39, applies to drivers whose licenses have been suspended and relates to the restoration of driver's licenses, while the 1957 Act, found at G.S. 20-309 to 20-319, applies to all motor vehicles' owners and relates to vehicle registration. The two Acts are complementary and are to be construed in pari materia so as to harmonize them and give effect to both. Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87, cert. denied, 329 N.C. 499, 407 S.E.2d 539 (1991).

Article 13 Requires Proof of Financial Responsibility to Be Given in Manner Prescribed by This Article. — The Vehicle Financial Responsibility Act of 1957, Article 13 of this Chapter, requires every owner of a motor vehicle, as a prerequisite to the registration thereof, to show "proof of financial responsibility" in the manner prescribed by this Article. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

Construction of Article. — Ambiguous provisions of the Financial Responsibility Law must be construed to accomplish the purpose of such law. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967).

The Act is to be liberally construed so that its intended purpose may be accomplished. Wilmoth v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 260, 488 S.E.2d 628 (1997), cert. denied, 347 N.C. 410, 494 S.E.2d 601 (1997).

The provisions of the Financial Responsibility Act are written into every automobile liability policy as a matter of law. Wilmoth v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 260, 488 S.E.2d 628 (1997), cert. denied, 347 N.C. 410, 494 S.E.2d 601 (1997).

Superior court properly reformed an insurance policy to include the amount of minimum coverage required by G.S. 20-309(a1); construing G.S. 20-279.21 and 20-309 in pari materia, just as provisions of G.S. 20-279.21 were read into every insurance policy as a matter of law, provisions of G.S. 20-309(a1) were also read into every insurance policy as a matter of law. N.C. Farm Bureau Mut. Ins. Co. v. Armwood, 181 N.C. App. 407, 638 S.E.2d 922, 2007 N.C. App. LEXIS 156 (2007), rev'd, 361 N.C. 576, 653 S.E.2d 392 (2007).

Contravening Policy Provision Is Void. — A provision in a policy of liability insurance which contravenes the Financial Responsibility Law is void. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967).

If there is a conflict between the Financial Responsibility Act and the language of the policy, the Act prevails. Wilmoth v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 260, 488 S.E.2d 628 (1997), cert. denied, 347 N.C. 410, 494 S.E.2d 601 (1997).

Section Reduces Importance of Family Purpose Doctrine. — The importance of the family purpose doctrine in this State has been greatly reduced by this section. Smith v. Simpson, 260 N.C. 601, 133 S.E.2d 474 (1963).

Definition of "Owner" in § 20-4.01 Applies to This Article. — The definition of "owner" in G.S. 20-4.01(26) applies throughout this Chapter, and thus to this Article unless the context otherwise requires. It thus must be read into every liability insurance policy within the purview of this Article, unless the context otherwise requires. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982); Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

And "Owner" Was Deleted from This Section Merely to Avoid Repetition. — Prior to 1973 the G.S. 20-4.01(26) definition of "owner" appeared in subdivision (9) of this section, which subdivision was repealed in 1973. The General Assembly placed it in G.S. 20-4.01. The apparent purpose was to eliminate unnecessary repetition of this definition in separate articles of this Chapter, not to make the definition inapplicable to this Article. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

For purposes of tort law and liability insurance coverage, no ownership passes to the purchaser of a motor vehicle which requires registration until: (1) The owner executes, in the presence of a person authorized to administer oaths, an assignment and warranty of title on the reverse of the certificate of title, including the name and address of the transferee; (2) there is an actual or constructive delivery of the motor vehicle; and (3) the duly assigned certificate of title is delivered to the transferee (or lienholder in secured transactions). Jenkins v. Aetna Cas. & Sur. Co., 324 N.C. 394, 378 S.E.2d 773 (1989).

Ownership Does Not Pass Until Transfer of Title Pursuant to § 20-72 (b). — For purposes of liability insurance coverage, ownership of a motor vehicle which requires registration under the Motor Vehicle Act of 1937 does not pass until transfer of legal title is effected as provided in G.S. 20-72(b). Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

Where an insured driver has the unrestricted use and possession of an automobile, the certificate of title for which is retained by another, the car is "furnished for the regular use of" the "non-owned" clause of the policy. Indiana Lumbermens Mut. Ins. Co. v. Unigard

Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

No Statutory Priority of Payment for Insurance Policies. — There is no provision of the act which expressly establishes a statutory priority of payment among different insurance policies. However, G.S. 20-279.21(i) does allow an insurance liability policy to "provide for the pro-rating of the insurance thereunder with other valid and collectible insurance." North Carolina Farm Bureau Mut. Ins. Co. v. Hilliard, 90 N.C. App. 507, 369 S.E.2d 386 (1988), decided under 1983 version of § 20-279.1.

Coverage When Other Policies Are Present. — Umbrella policy covering the car's owner did not limit its exclusion of coverage to when the driver of the vehicle was covered under some other policy for the statutory minimum amount, however, it did not provide excess coverage as to the car accident and it had no duty to defend. Harleysville Mut. Ins. Co. v. Zurich-American Ins. Co., 157 N.C. App. 317, 578 S.E.2d 701, 2003 N.C. App. LEXIS 545 (2003), cert. denied, 357 N.C. 250, 582 S.E.2d 269 (2003).

Trial court erred in holding that the owner's insurance policy terminated when the son's policy was issued on the same car because the automatic termination clause in the owner's policy's only applied if the owner obtained other insurance, and since the owner's policy and the son's policy were procured by different persons, the owner's policy did not automatically terminate; both policies provided liability coverage, but the son's policy only provided coverage under its liability provisions when the limit of the owner's policy's coverage was met. Progressive Am. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 184 N.C. App. 688, 647 S.E.2d 111, 2007 N.C. App. LEXIS 1625 (2007).

Coverage Available to Sheriff's Deputy. — County's policy controlled the underinsured motorist coverage available to a deputy sheriff as the North Carolina Motor Vehicle Safety and Financial Responsibility Act, G.S. 20-279.1 et seq., did not apply due to G.S. 20-279.32. N.C. Counties Liab. & Prop. Joint Risk Mgmt. Agency v. Curry, 191 N.C. App. 217, 662 S.E.2d 678, 2008 N.C. App. LEXIS 1225 (2008).

Applied in Manning v. State Farm Mut. Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965); Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971); Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984); Dutch v. Harleysville Mut. Ins. Co., 139 N.C. App. 602, 534 S.E.2d 262, 2000 N.C. App. LEXIS 976 (2000); Hlasnick v. Federated Mut. Ins. Co., 353 N.C. 240, 539 S.E.2d 274, 2000 N.C. LEXIS 898 (2000).

Cited in State v. Anderson, 3 N.C. App. 124, 164 S.E.2d 48 (1968); Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972); Reliance Ins. Co. v. Morrison, 59 N.C. App. 524, 297 S.E.2d 187 (1982); American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986); North Carolina Farm Bureau Mut. Ins. Co. v. Warren, 326 N.C. 444, 390 S.E.2d 138 (1990); Metropolitan Property & Cas. Ins. Co. v. Lindquist, 120 N.C. App. 847, 463 S.E.2d 574 (1995); Liberty Mut. Ins. Co. v. Pennington, 141 N.C. App. 495, 541 S.E.2d 503, 2000 N.C. App. LEXIS 1441 (2000); Tart v. Martin, 137 N.C. App. 371, 527 S.E.2d 708, 2000 N.C. App. LEXIS 326 (2000); Naddeo v. Allstate Ins. Co., 139 N.C. App. 311, 533 S.E.2d 501, 2000 N.C. App. LEXIS 890 (2000); North Carolina Farm Bureau Mut. Ins. Co. v. Perkinson, 140 N.C. App. 140, 535 S.E.2d 405, 2000 N.C. App. LEXIS 1095 (2000); Moore v. Cincinnati Ins. Co., 147 N.C. App. 761, 556 S.E.2d 682, 2001 N.C. App. LEXIS 1248 (2001); Farm Bureau Ins. Co. of N.C., Inc. v. Blong, 159 N.C. App. 365, 583 S.E.2d 307, 2003 N.C. App. LEXIS 1497 (2003); Espino v. Allstate Indem. Co., 159 N.C. App. 686, 583 S.E.2d 376, 2003 N.C. App. LEXIS 1526 (2003); Great American Ins. Co. v. Freeman, — N.C. App. —, 665 S.E.2d 536, 2008 N.C. App. LEXIS 1612 (2008); N.C. Farm Bureau Mut. Ins. Co. v. Simpson, — N.C. App. —, 678 S.E.2d 753, 2009 N.C. App. LEXIS 1087 (July 7, 2009).

§ 20-279.2. Commissioner to administer Article; appeal to court.

(a) The Commissioner shall administer and enforce the provisions of this Article and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Commissioner under the provisions of this Article.

(b) Any person aggrieved by an order or act of the Commissioner requiring a suspension or revocation of his license under the provisions of this Article, or requiring the posting of security as provided in this Article, or requiring the furnishing of proof of financial responsibility, may file a petition in the superior court of the county in which the petitioner resides for a review, and the commencement of such a proceeding shall suspend the order or act of the

Commissioner pending the final determination of the review. A copy of such petition shall be served upon the Commissioner, and the Commissioner shall have 20 days after such service in which to file answer. The appeal shall be heard in said county by the judge holding court in said county or by the resident judge. At the hearing upon the petition the judge shall sit without the intervention of a jury and shall receive such evidence as shall be deemed by the judge to be relevant and proper. Except as otherwise provided in this section, upon the filing of the petition herein provided for, the procedure shall be the same as in civil actions.

The matter shall be heard de novo and the judge shall enter his order affirming the act or order of the Commissioner, or modifying same, including the amount of bond or security to be given by the petitioner. If the court is of the opinion that the petitioner was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, the judge shall reverse the act or order of the Commissioner. Either party may appeal from such order to the Supreme Court in the same manner as in other appeals from the superior court and the appeal shall have the effect of further staying the act or order of the Commissioner requiring a suspension or revocation of the petitioner's license.

No act, or order given or rendered in any proceeding hereunder shall be admitted or used in any other civil or criminal action. (1953, c. 1300, s. 2.)

Legal Periodicals. — For article, "Toward a Codification of the Law of Evidence in North Carolina," see 16 Wake Forest L. Rev. 669 (1980).

CASE NOTES

Constitutionality. — The provisions for suspension of an automobile driver's license fully comply with constitutional requirements. State v. Martin, 13 N.C. App. 613, 186 S.E.2d 647, cert. denied, 281 N.C. 156, 188 S.E.2d 364, appeal dismissed, 281 N.C. 156, 188 S.E.2d 365 (1972).

Ample review is provided before a driver's license suspension becomes effective. State v. Martin, 13 N.C. App. 613, 186 S.E.2d 647, cert. denied, 281 N.C. 156, 188 S.E.2d 364, appeal dismissed, 281 N.C. 156, 188 S.E.2d 365 (1972).

This section makes no provision for intervention by persons who might recover damages from petitioner based on his actionable negligence in connection with an accident. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

But Commissioner May Notify Them of Hearing. — Persons who might recover damages from petitioner based on petitioner's actionable negligence in connection with an accident have no standing in a proceeding under subsection (b) as a matter of right. Even so, it is appropriate that the Commissioner notify such persons of the petition and of the hearing to the end that all competent and relevant evidence may be brought forward. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

And Court May Permit Such Persons to File Statements and Participate in Hearing. — While persons who might recover damages from petitioner based on petitioner's actionable negligence in connection with an accident may not be considered proper parties to the proceeding in a technical sense, the court, in its discretion, may permit such persons to file a statement relevant to the facts alleged in the petition and may permit them to participate in the hearing. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

However, Such Statements Are Not Evidence. — Statements by persons not considered proper parties to the proceeding in the technical sense, whether denominated an answer, affidavit, or otherwise, may not be considered competent evidence in the hearing. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

Commissioner Must Answer Petition. — Subsection (b) imposes upon the Commissioner (or his representative) the duty to answer all essential allegations of the petition and to be present and participate in the hearing before the judge. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

And Produce All Pertinent Evidence. — While the statute provides that the court shall make the crucial determinations, the statute contemplates that the Commissioner shall bring forward for the court's consideration all evidence in his possession pertinent to decision. Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

Filing Petition Is Equivalent to Super-

sedeas. — The filing of a petition under subsection (b) of this section to review the Commissioner's order is the equivalent of a supersedeas suspending the order until the question at issue has been determined by the superior court. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

The burden of proof is on petitioner to show he "was probably not guilty of negligence" or "that the negligence of the other party was probably the sole proximate cause of the collision." Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964).

Appeal to Supreme Court. — Where, upon petition for review of order of the Commissioner of Motor Vehicles suspending petitioners' operator's licenses, the owner of the other car involved in the collision is made a party by consent order and files answer, such owner must be served with statement of case on appeal to the Supreme Court. Johnson v. Scheidt, 246 N.C. 452, 98 S.E.2d 451 (1957).

Commissioner and Court Held Without Authority to Grant Relief. — Where petitioner did not allege that he was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, nor did he allege that the amount of the security required was excessive or that such security was not required by the terms of the statute and there were no allegations which if proved would entitle the petitioner to any relief, and the only relief requested by the petitioner was that the court postpone the posting of the security required by the Commissioner under G.S. 20-279.5, neither the Commissioner nor the court had the authority to grant this relief and a motion to dismiss was properly granted. Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

Insurer Required to Defend Until Settlement or Judgment Was Reached. — Insurance company was required to continue defending the insured until a settlement or judgment was reached despite having paid its policy limits under G.S. 1-540.3. Brown v. Lumbermens Mut. Cas. Co., 90 N.C. App. 464, 369 S.E.2d 367, cert. denied, 323 N.C. 363, 373 S.E.2d 542, cert. denied, 323 N.C. 363, 373 S.E.2d 541 (1988).

A cause of action alleging breach of good faith will not lie when the insurer settles a claim within the monetary limits of the insured's policy; the insurer has the duty to consider the insured's interest but may act in its own interest in settlement of the claim. Cash v. State Farm Mut. Auto. Ins. Co., 137 N.C. App. 192, 528 S.E.2d 372, 2000 N.C. App. LEXIS 312 (2000).

Statute Prevails in Conflict with Policy. — The provisions of the Motor Vehicle Safety and Financial Responsibility Act are written into every automobile liability policy as a matter of law and where the provisions of the policy conflict with the provisions of the statute, the statute prevails. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

Coverage which is in addition to the mandatory requirements of the statute are voluntary and are not subject to the requirements of the act. Voluntary coverage must be measured by the terms of the policy as written. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

OPINIONS OF ATTORNEY GENERAL

Hearing and Judicial Review Provisions Comply with Due Process Requirements. — See opinion of Attorney General to Senator Clyde Norton, 41 N.C.A.G. 420 (1971).

§ 20-279.3. Commissioner to furnish operating record.

The Commissioner shall upon request furnish any person a certified abstract of the operating record of any person required to comply with the provisions of this Article, which abstract shall also fully designate the motor vehicle, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the Commissioner shall so certify. (1953, c. 1300, s. 3.)

§ 20-279.4: Repealed by Session Laws 1995, c. 191, s. 4.

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.

(a) When the Division receives a report of a reportable accident under G.S. 20-166.1, the Commissioner must determine whether the owner or driver of a vehicle involved in the accident must file security under this Article and, if so, the amount of security the owner or driver must file. The Commissioner must make this determination at the end of 20 days after receiving the report.

(b) The Commissioner shall, within 60 days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and each owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, unless such operator or owner, or both, shall deposit security in the sum so determined by the Commissioner; provided, notice of such suspension shall be sent by the Commissioner to such operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security; provided further, the provisions of this Article requiring the deposit of security and the suspension of license for failure to deposit security shall not apply to an operator or owner who would otherwise be required to deposit security in an amount not in excess of one hundred dollars ($100.00). Where erroneous information is given the Commissioner with respect to the matters set forth in subdivisions (1), (2) or (3) of subsection (c) of this section or with respect to the ownership or operation of the vehicle, the extent of damage and injuries, or any other matters which would have affected the Commissioner's action had the information been previously submitted, he shall take appropriate action as hereinbefore provided, within 60 days after receipt by him of correct information with respect to said matters. The Commissioner, upon request and in his discretion, may postpone the effective date of the suspension provided in this section by 15 days if, in his opinion, such extension would aid in accomplishing settlements of claims by persons involved in accidents.

(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this

State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355; 1967, c. 277, s. 2; 1971, c. 763, s. 3; 1973, c. 745, s. 2; 1979, c. 832, s. 2; 1983, c. 691, s. 2; 1991, c. 469, s. 2; 1991 (Reg. Sess., 1992), c. 837, s. 10; 1995, c. 191, s. 5; 1999-228, s. 2.)

Cross References. — For provision requiring forms to carry statement concerning perjury, see G.S. 20-279.7A.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

CASE NOTES

The legislative policy behind uninsured motorist insurance laws is not to divide liability among insurers or limit insurers' liability, but to protect the motorist to the extent the statute requires protection against a specific class of tortfeasors. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

There is nothing in the legislative scheme suggesting that insured persons should have to concern themselves with the liability insurance limits of tortfeasors; in fact, the very purpose of uninsured motorist coverage is to ameliorate that concern. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Effect of Change in Uninsured Motorist Coverage by 1979 Amendment. — Motorists who contracted and paid premiums for uninsured motorist coverage after the effective date of the new limits provided in subsection (c) of this section by its 1979 amendment should receive coverage up to those higher limits. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Motorists with existing policies, including uninsured motorist coverage, at the level specified in subsection (c) of this section prior to its 1979 amendment could not claim up to the new limits if they were struck by an uninsured motorist; if those insureds, before their routinely scheduled policy renewal, desired more uninsured motorist coverage at the higher level, they could renew their policies early. In the interim, they would not be in violation of the Motor Vehicle Safety and Financial Responsibility Act because they retained their existing, lower-limit policies, nor would their insurers be forced to assume additional, uncontracted for liability. Hamilton v. Travelers

Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

"Stacking" or aggregating coverages under the compulsory uninsured motorist coverage requirement may occur where coverage is provided by two or more policies, each providing the mandatory minimum coverage. However, to the extent that the coverage provided by motor vehicle liability insurance policies exceeds the mandatory minimum coverage required by the statute, the additional coverage is voluntary, and is governed by the terms of the insurance contract. GEICO v. Herndon, 79 N.C. App. 365, 339 S.E.2d 472 (1986).

There is no requirement that all those covered under a policy be insured at identical levels of coverage; thus, as long as the minimum coverage requirements are met, no reason exists to prevent an insured from obtaining multi-tiered coverage for its employees. Hlasnick v. Federated Mut. Ins. Co., 136 N.C. App. 320, 524 S.E.2d 386, 2000 N.C. App. LEXIS 18 (2000), aff'd, in part, and cert. dismissed, in part, 353 N.C. 240, 539 S.E.2d 274 (2000).

This section makes it the duty of the Commissioner to suspend the driver's license if the owner-operator fails to discharge his liability for the damage resulting from the collision. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Multi-tier UIM coverage was upheld where the policy provided UIM coverage meeting the minimum statutory requirements of this section but the purchaser of the fleet policy paid additional premiums to provide higher limits of UIM coverage to certain persons insured in excess of the statutory floor. Hlasnick v. Federated Mut. Ins. Co., 353 N.C. 240, 539 S.E.2d 274, 2000 N.C. LEXIS 898 (2000).

Act of Commissioner in suspending a license is quasi-judicial. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

And it cannot be collaterally attacked. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

The driver of an automobile may not sue his insurer for damages resulting from the revocation of his driver's license resulting from the false representation of his insurer that the driver did not have insurance in force at the time he was involved in an accident, since such action amounts to a collateral attack upon the order of the Commissioner suspending the license and is based on subornation of perjury. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Plaintiff is entitled to hearing on factual question of whether he was insured. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

The second sentence in subsection (b) of this section gives the owner-operator of the motor vehicle full opportunity to present his evidence to the Commissioner to establish the fact that he did carry insurance as required. Robinson v. United States Cas. Co., 260 N.C. 284, 132 S.E.2d 629 (1963).

Allegations Insufficient to Authorize Postponement of Posting. — Where petitioner did not allege that he was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, nor did he allege that the amount of the security required was excessive or that such security was not required by the terms of the statute and there were no allegations which if proved would entitle the petitioner to any relief, and the only relief requested by the petitioner was that the court postpone the posting of the security required by the Commissioner under this section, neither the Commissioner nor the court had the authority to grant this relief and a motion to dismiss was properly granted. Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

Applied in Carter v. Scheidt, 261 N.C. 702, 136 S.E.2d 105 (1964); Carson v. Godwin, 269 N.C. 744, 153 S.E.2d 473 (1967); Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967); Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

Cited in Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970); State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970); Dildy v. Southeastern Fire Ins. Co., 13 N.C. App. 66, 185 S.E.2d 272 (1971); Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994); Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995); Progressive Am. Ins. Co. v. Vasquez, 129 N.C. App. 742, 502 S.E.2d 10 (1998); Corbett v. Smith, 131 N.C. App. 327, 507 S.E.2d 303 (1998).

§ 20-279.6. Further exceptions to requirement of security.

The requirements as to security and suspension in G.S. 20-279.5 shall not apply:

(1) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner;

(2) To the operator or the owner of a motor vehicle legally parked at the time of the accident;

(3) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission;

(4) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under G.S. 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, with respect to all claims for injuries or damages resulting from the accident;

(5) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under G.S. 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise be required to file security has in any manner settled the claims of the other persons involved in the accident and if the Commissioner determines that, considering the circumstances of the accident and the settlement, the purposes of this Article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. For the purpose of administering this subdivision, the Commissioner may consider a settlement made by an insurance company as the equivalent of a settlement made directly by the insured; nor

(6) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under G.S. 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that another person involved in the accident has been convicted by a court of competent jurisdiction of a crime involving the operation of a motor vehicle at the time of the accident, and if the Commissioner in his discretion determines, after considering the circumstances of the accident or the nature and the circumstances of the crime, that the purpose of this Article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. (1953, c. 1300, s. 6; 1955, c. 1152, ss. 9, 10.)

Cross References. — For provision requiring forms to carry statement concerning perjury, see G.S. 20-279.7A.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

§ 20-279.6A. Minors.

In determining whether or not any of the exceptions set forth in G.S. 20-279.6 have been satisfied, in the case of accidents involving minors, the Commissioner may accept, for the purpose of this Article only, as valid releases on account of claims for injuries to minors or damage to the property of minors releases which have been executed by the parent of the minor having custody of the minor or by the guardian of the minor if there be one. In the case of an emancipated minor, the Commissioner may accept a release signed by or a settlement agreed upon by the minor without the approval of the parents of the minor. If in the opinion of the Commissioner the circumstances of the accident, the nature and extent of the injuries or damage, or any other circumstances make it advisable for the best protection of the interest of the minor, the Commissioner may decline to accept such releases or settlements and may require the approval of the superior court. (1955, c. 1152, s. 11.)

§ 20-279.7. Duration of suspension.

The license and nonresident's operating privilege suspended as provided in G.S. 20-279.5 shall remain so suspended and shall not be renewed nor shall any such license be issued to such person until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under G.S. 20-279.5;

(2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioner has been filed with him that during such period no action for damages arising out of the accident has been instituted; or

(3) Evidence satisfactory to the Commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision (4) of G.S. 20-279.6 or a settlement accepted by the Commissioner as provided in subdivision (5) of G.S. 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of G.S. 20-279.6; provided, if there is a default in the payment of any installment or sum under a duly acknowledged written agreement, the Commissioner shall, upon notice of the default, immediately suspend the license or nonresident's operating privilege of the defaulting person and may not restore it until:

   a. That person deposits and thereafter maintains security as required under G.S. 20-279.5 in an amount determined by the Commissioner; or

   b. That person files evidence satisfactory to the Commissioner of a new duly acknowledged written agreement or a settlement. (1953, c. 1300, s. 7; 1955, c. 1152, s. 12; 1983, c. 610, s. 1.)

Cross References. — For provision requiring forms to carry statement concerning perjury, see G.S. 20-279.7A.

CASE NOTES

Applied in Forrester v. Garrett, 280 N.C. 117, 184 S.E.2d 858 (1971).

§ 20-279.7A. Forms to carry statement concerning perjury.

A person who makes a false affidavit or falsely sworn or affirmed statement concerning information required to be submitted under this Article commits a Class I felony. The Division shall include a statement of this offense on a form that it provides under this Article and that must be completed under oath. (1983, c. 610, s. 3; 1993 (Reg. Sess., 1994), c. 761, s. 26.)

§ 20-279.8. Application to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states.

(a) In case the operator or the owner of a motor vehicle involved in an accident within this State has no license, or is a nonresident, he shall not be allowed a license until he has complied with the requirements of this Article to the same extent that it would be necessary if, at the time of the accident, he had held a license.

(b) When a nonresident's operating privilege is suspended pursuant to G.S. 20-279.5 or 20-279.7, the Commissioner shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this section.

(c) Upon receipt of such certification that the operating privilege of a resident of this State has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioner to suspend a nonresident's operating privilege had the accident occurred in this State the Commissioner shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. (1953, c. 1300, s. 8.)

§ 20-279.9. Form and amount of security.

The security required under this Article shall be in such form and in such amount as the Commissioner may require but in no case in excess of the limits specified in G.S. 20-279.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Commissioner or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The Commissioner may reduce the amount of security ordered in any case if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of G.S. 20-279.10. (1953, c. 1300, s. 9.)

§ 20-279.10. Custody, disposition and return of security; escheat.

(a) Security deposited in compliance with the requirements of this Article shall be placed by the Commissioner in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subdivision (3) of G.S. 20-279.7, or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with subdivision (4) of G.S. 20-279.6, or a settlement accepted by the Commissioner as provided in subdivision (5) of G.S. 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of G.S. 20-279.6, or whenever, after the expiration of one year from the date of the accident, or from the date of deposit of any security under subdivision (3) of G.S. 20-279.7, whichever is later, the Commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

(b) One year from the deposit of any security under the terms of this Article, the Commissioner shall notify the depositor thereof by registered mail addressed to his last known address that the depositor is entitled to a refund of the security upon giving reasonable evidence that no action at law for damages arising out of the accident in question is pending or that no judgment rendered in any such action remains unpaid. If, at the end of three years from the date of deposit, no claim therefor has been received, the Division shall notify the depositor thereof by registered mail and shall cause a notice to be posted at the courthouse door of the county in which is located the last known address of the depositor for a period of 60 days. Such notice shall contain the name of the depositor, his last known address, the date, amount and nature of the deposit, and shall state the conditions under which the deposit will be refunded. If, at the end of two years from the date of posting of such notice, no claim for the deposit has been received, the Commissioner shall certify such fact together with the facts of notice to the State Treasurer. These deposits shall be turned over to the Escheat Fund of the Department of State Treasurer. (1953, c. 1300, s. 10; 1955, c. 1152, s. 13; 1967, c. 1227; 1975, c. 716, s. 5; 1981, c. 531, s. 16.)

§ 20-279.11. Matters not to be evidence in civil suits.

Neither the information on financial responsibility contained in an accident report, the action taken by the Commissioner pursuant to this Article, the findings, if any, of the Commissioner upon which the action is based, or the security filed as provided in this Article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (1953, c. 1300, s. 11; 1995, c. 191, s. 6.)

§ 20-279.12. Courts to report nonpayment of judgments.

Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this State, to forward to the Commissioner immediately after the expiration of said 60 days, a certified copy of such judgment.

If the defendant named in any certified copy of a judgment reported to the Commissioner is a nonresident, the Commissioner shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident. (1953, c. 1300, s. 12.)

§ 20-279.13. Suspension for nonpayment of judgment; exceptions.

(a) The Commissioner, upon the receipt of a certified copy of a judgment, which has remained unsatisfied for a period of 60 days, shall forthwith suspend the license and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in G.S. 20-279.16.

(b) The Commissioner shall not, however, revoke or suspend the license of an owner or driver if the insurance carried by him was in a company which was authorized to transact business in this State and which subsequent to an accident involving the owner or operator and prior to settlement of the claim therefor went into liquidation, so that the owner or driver is thereby unable to satisfy the judgment arising out of the accident.

(c) If the judgment creditor consents in writing, in such form as the Commissioner may prescribe, that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the Commissioner, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in G.S. 20-279.16. (1953, c. 1300, s. 13; 1965, c. 926, s. 1; 1969, c. 186, s. 4; 1979, c. 667, s. 37.)

CASE NOTES

A statute as free from ambiguity as this section requires no construction, only adherence. Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540, cert. denied, 312 N.C. 498, 322 S.E.2d 566 (1984).

Cited in Hunnicutt v. Shelby Mut. Ins. Co., 255 N.C. 515, 122 S.E.2d 74 (1961); Lupo v. Powell, 44 N.C. App. 35, 259 S.E.2d 777 (1979).

OPINIONS OF ATTORNEY GENERAL

Applicability of Subsection (a). — The mandatory provisions of subsection (a) are not applicable to unsatisfied judgments based on debt and/or conversion of a motor vehicle and damages resulting therefrom. Opinion of Attorney General to Mr. Charles Hensley, 44 N.C.A.G. 250 (1975).

Satisfaction of Judgment by Joint Tort-Feasor May Not Satisfy Judgment for Other Tort-Feasor for Driver License Suspension Purposes. — See opinion of Attorney General to Mr. Donald N. Freeman, Supervisor, Department of Motor Vehicles, 41 N.C.A.G. 99 (1970).

Second Judgment upon Expiration of Ten Years After First Judgment Not Grounds for Continued Suspension of License. — See opinion of Attorney General to Mr. Donald N. Freeman, Supervisor, Department of Motor Vehicles, 40 N.C.A.G. 99 (1970).

§ 20-279.14. Suspension to continue until judgments satisfied.

Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment:

(1) Is stayed, or
(2) Is satisfied in full, or
(3) Is subject to the exemptions stated in G.S. 20-279.13 or G.S. 20-279.16, or
(4) Is barred from enforcement by the statute of limitations pursuant to G.S. 1-47,
(5) Is discharged in bankruptcy. (1953, c. 1300, s. 14; 1969, c. 186, s. 5; 1975, c. 301.)

CASE NOTES

Effect of § 20-279.36. — This section shall not apply with respect to any accident or judgment arising therefrom, or violation of the motor vehicle laws of this State, occurring prior to the effective date of this section, under the provisions of G.S. 20-279.36. Justice v. Scheidt, 252 N.C. 361, 113 S.E.2d 709 (1960).

OPINIONS OF ATTORNEY GENERAL

Satisfaction of Judgment by Joint Tort-Feasor May Not Satisfy Judgment for Other Tort-Feasor for Driver License Suspension Purposes. — See opinion of Attorney General to Mr. Freeman, Department of Motor Vehicles, 40 N.C.A.G. 99 (1970).

§ 20-279.15. Payment sufficient to satisfy requirements.

In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this Article, be deemed satisfied:

(1) When thirty thousand dollars ($30,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of thirty thousand dollars ($30,000) because of bodily injury to or death of one person, the sum of sixty thousand dollars ($60,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When twenty-five thousand dollars ($25,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section. (1953, c. 1300, s. 15; 1963, c. 1238; 1967, c. 277, s. 3; 1973, c. 745, s. 3; c. 889; 1979, c. 832, ss. 3-5; 1991, c. 469, s. 3; 1991 (Reg. Sess., 1992), c. 837, s. 10; 1999-228, s. 3.)

CASE NOTES

Coverage Extends to Property Damage as Well as Personal Injuries. — Under subdivision (3) of this section, coverage within this Article extends to property damage as well as to personal damages occurring to the victim of an accident. Nationwide Mut. Ins. Co. v. Knight, 34 N.C. App. 96, 237 S.E.2d 341, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

Property Damage from Intentional Ramming of Defendant's Car. — An automobile insurer was required to compensate defendant for any property damage arising out of the intentional ramming of defendant's automobile by the insured. Nationwide Mut. Ins. Co. v. Knight, 34 N.C. App. 96, 237 S.E.2d 341, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

§ 20-279.16. Installment payment of judgments; default.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Commissioner shall not suspend a license or a nonresident's operating privilege, and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Commissioner shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this Article. (1953, c. 1300, s. 16; 1969, c. 186, s. 6.)

CASE NOTES

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

§ 20-279.17: Repealed by Session Laws 1967, c. 866.

§ 20-279.18. Alternate methods of giving proof.

Proof of financial responsibility when required under this Article with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(1) A certificate of insurance as provided in G.S. 20-279.19 or 20-279.20; or
(2) A bond as provided in G.S. 20-279.24; or
(3) A certificate of deposit of money or securities as provided in G.S. 20-279.25; or
(4) A certificate of self-insurance, as provided in G.S. 20-279.33, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. (1953, c. 1300, s. 18.)

CASE NOTES

Cited in Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972).

§ 20-279.19. Certificate of insurance as proof.

Proof of financial responsibility may be furnished by filing with the Commissioner the written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle. The Commissioner may require that certificates filed pursuant to this section be on a form approved by the Commissioner. (1953, c. 1300, s. 19; 1955, c. 1152, s. 16.)

CASE NOTES

Filing Does Not Estop Insurer from Denying Coverage. — The filing, as required by this section, does not estop an insurance carrier from thereafter denying coverage under the policy. Seaford v. Nationwide Mut. Ins. Co., 253 N.C. 719, 117 S.E.2d 733 (1961).

Cited in Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961); Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968); Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973).

§ 20-279.20. Certificate furnished by nonresident as proof.

(a) The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this Article, and the Commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State; and

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(c) The Commissioner may require that certificates and powers filed pursuant to this section be on forms approved by the Commissioner. (1953, c. 1300, s. 20; 1955, c. 1152, s. 17.)

CASE NOTES

Cited in Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973); Fortune Ins. Co. v. Owens, 351 N.C. 424, 526 S.E.2d 463, 2000 N.C. LEXIS 240 (2000).

§ 20-279.21. "Motor vehicle liability policy" defined.

(a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other

persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident; and

(3) **(Effective until February 1, 2010)** No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist bodily injury coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. The insurer shall notify the named insured of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

G.S. 20-279.21(b)(3) is set out twice. See note.

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher uninsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(3) **(Effective February 1, 2010)** No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one

G.S. 20-279.21(b)(3) is set out twice. See note.

million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. The provisions shall include coverage for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured. The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other

G.S. 20-279.21(b)(3) is set out twice. See note.

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process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

G.S. 20-279.21(b)(3) is set out twice. See note.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;
b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase greater or lesser uninsured motorist bodily injury coverage limits and lesser uninsured motorist property damage coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(4) **(Effective until February 1, 2010)** Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured motorist coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000.000) per accident. The insurer shall notify the named insured of his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides

G.S. 20-279.21(b)(4) is set out twice. See note.

underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(4) **(Effective February 1, 2010)** Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this subsection. The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (ii) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident, and (iii) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance

policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy

G.S. 20-279.21(b)(4) is set out twice. See note.

covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or

G.S. 20-279.21(b)(4) is set out twice. See note.

obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase greater or lesser underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For a claim for property damage to a motor vehicle against an insurer, the policy shall provide that if:

(1) The claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and

(2) The difference in the claimant's and the insurer's estimate of the diminution in fair market value is greater than two thousand dollars ($2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less, then on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the accident occurred select the umpire. The appraisers shall then submit their differences to the umpire. The umpire then shall prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers or the report of the umpire, when filed with the insurer and the claimant, shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. Each appraiser shall be paid by the party selecting the appraiser, and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a person who as a part of his or her regular employment is in the business of advising relative to the nature and amount of motor vehicle damage and the fair market value of damaged and undamaged motor vehicles.

(e) Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy shall insure that portion of a loss uncompensated by any workers' compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(*l*) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation.

(m) **(Effective until February 1, 2010)** Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured, when the policy is issued and renewed, that the named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 10 point type:

"NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS ($1,000,000) PER PERSON AND ONE MILLION DOLLARS ($1,000,000) PER ACCIDENT. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

(m) **(Effective February 1, 2010)** Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall, when issuing and renewing a policy, give reasonable notice to the named insured of all of the following:

(1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, and, if applicable, underinsured motorist bodily injury coverage.

(2) The named insured's uninsured motorist bodily injury coverage limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist bodily injury coverage.

(3) The named insured's uninsured motorist property damage coverage limits shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy unless the insured elects to purchase lesser limits for uninsured motorist property damage coverage.

(4) The named insured's underinsured motorist bodily injury coverage limits, if applicable, shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.

(5) The named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.

An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 12 point type:

NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAM-

G.S. 20-279.21(m) is set out twice. See note.

AGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS ($1,000,000) PER PERSON AND ONE MILLION DOLLARS ($1,000,000) PER ACCIDENT OR AT SUCH LESSER LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE, AND/OR A GREATER OR LESSER LIMIT FOR UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR THE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS FOR THE UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING DIFFERENT COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES.

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70. (1953, c. 1300, s. 21; 1955, c. 1355; 1961, c. 640; 1965, c. 156; c. 674, s. 1; c. 898; 1967, c. 277, s. 4; c. 854; c. 1159, s. 1; c. 1162, s. 1; c. 1186, s. 1; c. 1246, s. 1; 1971, c. 1205, s. 2; 1973, c. 745, s. 4; 1975, c. 326, ss. 1, 2; c. 716, s. 5; c. 866, ss. 1-4; 1979, cc. 190, 675; c. 832, ss. 6, 7; 1983, c. 777, ss. 1, 2; 1985, c. 666, s. 74; 1985 (Reg. Sess., 1986), c. 1027, ss. 41, 42; 1987, c. 529; 1987 (Reg. Sess., 1988), c. 975, s. 33; 1991, c. 469, s. 4; c. 636, s. 3; c. 646, ss. 1, 2; c. 761, s. 12.3; 1991 (Reg. Sess., 1992), c. 837, s. 9; 1997-396, ss. 2, 3; 1999-195, s. 1; 1999-228, s. 4; 2003-311, ss. 1, 2; 2008-124, ss. 1.1, 1.2; 2009-440, s. 1; 2009-561, s. 1; 2009-566, s. 28.)

Subdivisions (b)(3), (b)(4), and Subsection (m) Set Out Twice. — The first versions of subdivisions (b)(3), (b)(4), and subsection (m) set out above are effective until February 1, 2010. The second versions of subdivisions (b)(3), (b)(4), and subsection (m) set out above are effective February 1, 2010.

Editor's Note. — The 1991 amendment to subdivisions (b)(3) and (b)(4) of this section by Session Laws 1991, c. 646, ss. 1 and 2 became effective November 5, 1991, 60 days after approval by the Commissioner of Insurance of filings made by the Bureau under section 3 of the 1991 act.

Session Laws 2008-124, s. 11.1 is a severability clause.

Session Laws 2009-566, s. 28, amended Session Laws 2009-440, s. 3, contingent on Senate Bill 660 [S.L. 2009-440] becoming law, which it did. The section made subsection (d1) effective January 1, 2010, and applicable to motor vehicle liability insurance policies issued or renewed on or after that date.

Effect of Amendments. — Session Laws 2008-124, ss. 1.1 and 1.2, effective January 1, 2009, and applicable to policies issued or renewed on or after that date, in subdivision (b)(3), rewrote the first paragraph and added the last paragraph; in subdivision (b)(4), rewrote the first paragraph, deleted the former sixth and seventh paragraphs, and added the last paragraph; added subsections (m) through (o).

Session Laws 2009-440, s. 1, effective January 1, 2010, and applicable to motor vehicle liability insurance policies issued or renewed on or after that date, added subsection (d1).

Session Laws 2009-561, s. 1, effective February 1, 2010, and applicable to motor vehicle liability insurance policies issued or renewed on or after that date, in subdivision (b)(3), rewrote the first paragraph, added the present second and third sentences in the last paragraph, and substituted "purchase greater or lesser uninsured motorist bodily injury coverage limits and lesser uninsured motorist property damage coverage limits" for "purchase higher uninsured motorist bodily injury liability coverage limits" in the next to last sentence of the last paragraph; in subdivision (b)(4), rewrote the first three sentences of the first paragraph and, in the last paragraph, inserted the present second and third sentences and substituted "purchase greater or lesser" for "purchase higher" in the present next to last sentence; and, in subsection (m), divided the former first paragraph of the subsection into the present introductory language and subdivision (m)(5) by substituting "shall, when issuing and renewing a policy, give reasonable notice to the named insured of all of the following:" for "give reasonable notice to the named insured, when the policy is issued and renewed," added subdivisions (m)(1)-(m)(4), substituted "12 point type" for "10 point type" at the end of the second paragraph of the subsection, and rewrote the declaration at the end of the subsection.

Legal Periodicals. — For note on automobile liability policies, see 35 N.C.L. Rev. 313 (1957).

For note on permissive user under the omnibus clause, see 41 N.C.L. Rev. 232 (1963).

For note on liability of insurer without notice, see 41 N.C.L. Rev. 853 (1963).

For note on insurer's liability for injuries intentionally inflicted by insured by use of automobile, see 43 N.C.L. Rev. 436 (1965).

For note on the statutory definition of an "uninsured motor vehicle" when the liability insurer is insolvent or denies coverage, see 45 N.C.L. Rev. 551 (1967).

For note on liability of insurer beyond policy limits, see 47 N.C.L. Rev. 453 (1969).

For note entitled "Liability of Insurers under the Omnibus Clause to Protect Emergency Drivers — The North Carolina Situation," see 48 N.C.L. Rev. 984 (1970).

For survey of 1973 case law with regard to the construction of the omnibus clause, see 52 N.C.L. Rev. 809 (1974).

For survey of 1977 law on insurance, see 56 N.C.L. Rev. 1084 (1978).

For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1060 (1981).

For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

For comment on insurer's liability for injury to alighting passengers, see 18 Wake Forest L. Rev. 537 (1982).

For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

For note on use of the family purpose doctrine when no outsiders are involved, in light of Carver v. Carver, 310 N.C. 669, 314 S.E.2d 739 (1984), see 21 Wake Forest L. Rev. 243 (1985).

For note, "Underinsured Motorist Coverage: Legislative Solutions to Settlement Difficulties," see 64 N.C.L. Rev. 1408 (1986).

For comment, "A Gap in the North Carolina Motor Vehicle Liability Policy Statute: Joint Tortfeasors — When and How Does Underinsured Motorist Coverage Apply?," see 12 Campbell L. Rev. 99 (1989).

For note, "Sutton v. Aetna Casualty & Surety Co.: The North Carolina Supreme Court Approves Stacking of Underinsured Motorist Coverage—Will Uninsured Coverage Follow?," see 68 N.C.L. Rev. 1281 (1990).

For note, "The Duty to Defend — Brown v. Lumbermens Mut. Cas. Co.," 13 Campbell L. Rev. 141 (1990).

For note, "Baxley v. Nationwide Mutual Insurance Company: A Key Loophole in the Financial Responsibility Act of 1953 Comes to Light," see 72 N.C.L. Rev. 1809 (1994).

For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

For survey, "Reconciling North Carolina's Interpretation of 'Legally Entitled to Recover' with the Spirit of the Uninsured Motorist Statute: The Lessons of Grimsley v. Nelson," see 73 N.C.L. Rev. 2474 (1995).

For a note on the effect on underinsured motorist benefits of covenants not to enforce judgment, see 76 N.C.L. Rev. 2482 (1998).

CASE NOTES

I. General Consideration.
II. The Omnibus Clause.
III. Uninsured Motorist Coverage.
IV. Underinsured Motorist Coverage.

I. GENERAL CONSIDERATION.

The manifest purpose of this Article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and, in respect of a "motor vehicle liability policy," to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. Nixon v. Liberty Mut. Ins. Co., 255 N.C. 106, 120 S.E.2d 430 (1961), quoting Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960); Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962); Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

The primary purpose of this Article is to compensate the innocent victims of financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973).

The purpose of the Financial Responsibility Act has always been to protect innocent motorists from financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

The primary purpose of compulsory motor vehicle liability insurance is to compensate innocent victims who have been injured by financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964); Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967); Strickland v. Hughes, 273 N.C. 481, 160 S.E.2d 313 (1968); Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

The mandatory coverage required by this Article is solely for the protection of innocent victims who may be injured by financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977); Engle v. State Farm Mut. Auto. Ins. Co., 37 N.C. App. 126, 245 S.E.2d 532, cert. denied, 295 N.C. 645, 248 S.E.2d 250 (1978).

The primary purpose of the compulsory motor vehicle liability insurance required by North Carolina's Financial Responsibility Act is to compensate innocent victims who have been injured by financially irresponsible motorists. Furthermore, the act is to be liberally construed so that the beneficial purpose intended by its enactment may be accomplished. South Carolina Ins. Co. v. Smith, 67 N.C. App. 632, 313 S.E.2d 856, cert. denied, 311 N.C. 306, 317 S.E.2d 682 (1984).

The purpose of this State's compulsory motor vehicle insurance laws, of which the underinsured motorist provisions are a part, was and is the protection of innocent victims who may be injured by financially irresponsible motorists. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 324 N.C. 221, 376 S.E.2d 761 (1989).

Protection of innocent victims who may be injured by financially irresponsible motorists has repeatedly been held to be the fundamental purpose of the Financial Responsibility Act. Hartford Underwriters Ins. Co. v. Becks, 123 N.C. App. 489, 473 S.E.2d 427 (1996).

The purpose of uninsured motorist (UM) and underinsured motorist (UIM) coverage is to compensate the innocent victims of financially irresponsible motorists. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

The purpose of this statute is to provide some financial recompense to innocent persons who receive bodily injury or property damage due to the negligence of uninsured motorists or those unidentified drivers who leave the scene of an accident. Williams v. Holsclaw, 128 N.C. App. 205, 495 S.E.2d 166 (1998).

The legislative purpose in permitting stacking is to provide the innocent victim of an inadequately insured driver with an additional source of recovery so that she may receive full compensation for her injuries. Smith v. Nationwide Mut. Ins. Co., 97 N.C. App. 363, 388 S.E.2d 624 (1990), rev'd on other grounds, 328 N.C. 139, 400 S.E.2d 44, rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

The Act is to be liberally construed so that its intended purpose may be accomplished. Wilmoth v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 260, 488 S.E.2d 628 (1997), cert. denied, 347 N.C. 410, 494 S.E.2d 601 (1997).

Supplemental Effect of § 20-281. — Section 20-281, which applies specifically to automobile owners who lease their cars for profit, is a companion section to and supplements this section, which applies to automobile owners generally. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Section 20-281 is a source of mandatory terms for automobile liability insurance policies in addition to and independent of this section. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Section G.S. 20-281, which applies to entities in the business of leasing vehicles, supplements this section and is intended to protect innocent drivers from financially irresponsible drivers. Hertz Corp. v. New S. Ins. Co., 129 N.C. App. 227, 497 S.E.2d 448 (1998).

A compulsory motor vehicle insurance act is a remedial statute and will be liberally construed so that the beneficial purpose intended by its enactment by the General Assembly may be accomplished. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967); State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 N.C. 534, 350 S.E.2d 66 (1986); Harris ex rel. Freedman v. Nationwide Mut. Ins. Co., 332 N.C. 184, 420 S.E.2d 124 (1992).

This statute was enacted as remedial legislation and is to be liberally construed to effectuate its purpose. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

This section was enacted as remedial legislation and is to be liberally construed to effectuate its purpose, that being to provide, within fixed limits, some financial recompense to innocent persons who receive bodily injury or property damage, and to the dependents of those who lose their lives through the wrongful conduct of an uninsured motorist who cannot be made to respond in damages. Hendricks v. United States Fid. & Guar. Co., 5 N.C. App. 181, 167 S.E.2d 876 (1969).

Obligations Imposed by Article. — The Motor Vehicle Financial Responsibility Act obliges a motorist either to post security or to carry liability insurance, not accident insurance, to indemnify all persons who might be injured by the insured's car. Moore v. Young, 263 N.C. 483, 139 S.E.2d 704 (1965); McKinney v. Morrow, 18 N.C. App. 282, 196 S.E.2d 585, cert. denied, 283 N.C. 665, 197 S.E.2d 874 (1973).

Policies Are Mandatory. — In this State, all insurance policies covering loss from liability arising out of the ownership, maintenance, or use of a motor vehicle are, to the extent required by this section, mandatory. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964); Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

Statute Applies to All Financially Irresponsible Persons, Including Minors. — The language of the Financial Responsibility Act leaves no doubt that the legislature intended to make all financially irresponsible persons, including minors, subject to its provisions. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

The provisions of this section are written into every policy as a matter of law. In case a provision of the policy conflicts with a provision of the statute favorable to the insured, the provision of the statute controls. As a consequence, an insurance company cannot avoid liability on a policy of insurance issued pursuant to a statute by omitting from the policy provisions favorable to the insured, which are required by the statute. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

The provisions of the Financial Responsibility Act are "written" into every automobile liability policy as a matter of law, and, when the terms of the policy conflict with the statute, the provisions of the statute will prevail. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977); Engle v. State Farm Mut. Auto. Ins. Co., 37 N.C. App. 126, 245 S.E.2d 532, cert. denied, 295 N.C. 645, 248 S.E.2d 250 (1978); Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

The provisions of a statute applicable to insurance policies are a part of the policy to the same extent as if therein written, and when the terms of the policy conflict with statutory provisions favorable to the insured, the provisions of the statute will prevail. Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973); American Tours, Inc. v. Liberty Mut. Ins. Co., 68 N.C. App. 668, 316 S.E.2d 105, modified on other grounds and aff'd, 315 N.C. 341, 338 S.E.2d 92 (1986).

When the insuring language of the policy conflicts with the coverage mandated by this section, the provisions of the statute will control. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 N.C. 534, 350 S.E.2d 66 (1986), reading into insurance policy coverage for damages arising out of the use of an automobile.

This section and G.S. 20-281 prescribe mandatory terms which become part of every liability policy insuring automobile lessors. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

When a statute is applicable to the terms of an insurance policy, the provisions of the statute become the terms of the policy, as if written into it. If the terms of the statute and the policy conflict, the statute prevails. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

When a statute applies to the terms of an insurance policy, the provisions of the statute become terms of the policy to the same extent as if they were written in the policy, and if the terms of the policy conflict with the statute, the provisions of the statute control. Baxley v. Nationwide Mut. Ins. Co., 115 N.C. App. 718, 446 S.E.2d 597 (1994).

The provisions of the Financial Responsibility Act are written into every automobile liability policy as a matter of law. Wilmoth v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 260, 488 S.E.2d 628 (1997), cert. denied, 347 N.C. 410, 494 S.E.2d 601 (1997).

Construction of Statute with Terms of Policy. — When a statute is applicable to the terms of an insurance policy, the provisions of the statute become a part of the policy as if written into it. If the terms of the statute and the policy conflict, the statute prevails. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 341 N.C. 678, 462 S.E.2d 650 (1995).

Construction in Pari Materia With G.S. 20-309. — Superior court properly reformed an insurance policy to include the amount of minimum coverage required by G.S. 20-309(a1); construing G.S. 20-279.21 and G.S. 20-309 in pari materia, just as provisions of G.S. 20-279.21 were read into every insurance policy as a matter of law, provisions of G.S. 20-309(a1) were also read into every insurance policy as a matter of law. N.C. Farm Bureau Mut. Ins. Co. v. Armwood, 181 N.C. App. 407, 638 S.E.2d 922, 2007 N.C. App. LEXIS 156 (2007), rev'd, 361 N.C. 576, 653 S.E.2d 392 (2007).

Act Prevails Over Conflicting Policy. — If there is a conflict between the Financial Responsibility Act and the language of the policy, the Act prevails. Wilmoth v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 260, 488 S.E.2d 628 (1997), cert. denied, 347 N.C. 410, 494 S.E.2d 601 (1997).

Exclusionary Provisions Contravening Article Are Void. — If an exclusionary provision of an assigned risk policy contravenes this Article, it is void. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

The public policy embodied by the Financial Responsibility Act controls over an exclusionary provision in a policy issued pursuant to the Act. Allstate Ins. Co. v. Webb, 10 N.C. App. 672, 179 S.E.2d 803 (1971); Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973).

The public policy goals of the Financial Responsibility Act apply only when the Act itself is being construed or when determinations are being made regarding the extent to which the Act, as to its mandatory minimum coverages, may override conflicting insurance policy provisions. Newell v. Nationwide Mut. Ins. Co., 334 N.C. 391, 432 S.E.2d 284 (1993).

There is nothing in this Article which authorizes the insurance company to exclude by the terms of its policy liability of the operator of an automobile if it is an automobile owned by a member of his household, and such a clause in the policy being repugnant to and in conflict with the provisions of this Article is void and of no effect. Indiana Lumbermens Mut. Ins. Co. v. Parton, 147 F. Supp. 887 (M.D.N.C. 1957).

Provision of an owner's automobile liability policy excluding from coverage an owned automobile while used "in the automobile business" by any person other than the named insured and certain other persons is repugnant to the mandatory requirements of the Motor Vehicle and Financial Responsibility Act and is, therefore, invalid. Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973).

An exclusion which attempts to limit the protection available to those designated as insureds to only the insured vehicle would be contrary to subdivision (b)(3) of this section and void. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986).

Rate Bureau Form Not Required. — This section did not require the defendant's fleet policy to use a form promulgated by the Rate Bureau. Hlasnick v. Federated Mut. Ins. Co., 136 N.C. App. 320, 524 S.E.2d 386, 2000 N.C. App. LEXIS 18 (2000), aff'd, in part, and cert. dismissed, in part, 353 N.C. 240, 539 S.E.2d 274 (2000).

The definition of "persons insured" contained in subsection (b)(3) does not apply to liability coverage. Haight v. Travelers/Aetna Property Cas. Corp., 132 N.C. App. 673, 514 S.E.2d 102 (1999).

In essence, subdivision (b)(3) of this section establishes two "classes" of "persons insured": (1) The named insured and, while resident of the same household, the spouse of the named insured and relatives of either and (2) any person who uses with the consent, express or implied, of the named insured, the insured vehicle, and a guest in such vehicle. The latter class are "persons insured" under this section only when the insured vehicle is involved, while the former class are "persons insured" even where the insured vehicle is not involved in the insured's injuries. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986).

Under subdivision (b)(3) of this section there are two classes of "persons insured": (1) the named insured and, while resident of the same household, the spouse of the named insured and relatives of either and (2) any person who uses with the consent, express or implied, of the named insured, the insured vehicle, and a guest of such vehicle. In the first class, a person is insured whether or not the insured vehicle is involved in the injuries; a person is insured in the second class only when the insured vehicle is involved in the injuries. Busby v. Simmons, 103 N.C. App. 592, 406 S.E.2d 628 (1991).

Policy Providing Coverage in Excess of Statutory Requirement. — An assigned risk policy providing no coverage in excess of the statutory requirement must be construed in connection with the public policy which the Motor Vehicle Safety and Financial Responsibility Act embodies. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

Is Deemed Voluntary Policy to Extent of Excess. — All insurance policies which insure in excess of the compulsory coverage of this section are voluntary policies to the extent of the excess. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

And Is Not Subject to Requirements of Section. — Coverage furnished an insured which is in addition to the mandatory statutory requirements, and is therefore voluntary, is not subject to the requirements of this section. Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973).

To the extent that coverage provided by motor vehicle liability insurance policies exceeds the mandatory minimum coverage required by statute, the additional coverage is voluntary, and is governed by the terms of the insurance contract. Nationwide Mut. Ins. Co. v. Massey, 82 N.C. App. 448, 346 S.E.2d 268 (1986).

In general, liability insurance coverage in excess of the amounts required under subdivision (b)(2) of this section is voluntary and not controlled by the provisions of the act. Subsection (g) of this section specifically excludes such coverage in addition to and in excess of that required by subdivision (b)(2) of this section. Aetna Cas. & Sur. Co. v. Younts, 84 N.C. App. 399, 352 S.E.2d 850 (1987).

In Absence of Statutory Provision, Liability Measured by Terms of Policy. — In the absence of any provision in the Financial Responsibility Act broadening the liability of the insurer, such liability must be measured by the terms of its policy as written. Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962); Younts v. State Farm Mut. Auto. Ins. Co., 281 N.C. 582, 189 S.E.2d 137 (1972).

Liability on Voluntary Policy Must Accrue Under Provisions in Contract. — The insurer under a voluntary policy is liable only if its liability accrues under the provisions set out in the contract of insurance between defendant and its insured. Younts v. State Farm Mut. Auto. Ins. Co., 281 N.C. 582, 189 S.E.2d 137 (1972).

And Injured Party Has No Greater Rights Against Insurer Than Has Insured. — With reference to an owner's policy of insurance, unless the action be based on policy provisions required by this section, an injured party who obtains a judgment against the insured has no greater rights against the insurer than those of the insured. Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

Compliance with Voluntary Policy Provisions Is Condition Precedent to Recovery. — Where coverage in a policy is in addition to the coverage required by the Motor Vehicle Safety and Financial Responsibility Act, provisions requiring that an insured give notice of an accident, and requiring the insured's cooperation in defense of any action against him are binding and enforceable. Moreover, compliance with such policy provisions is a condition precedent to recovery, with the burden of proof on the insured to show compliance, where the policy provides, "No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy," or words of like import. Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

The failure of insured under an assigned risk policy to give notice of an accident occurring while he was driving an automobile other than the one named in the policy precludes recovery by the insured or by the injured third person against insurer, even though the policy contains additional coverage, if insured is driving another vehicle, since such additional coverage is not required by this Article, and therefore the provisions of this Article are not applicable thereto. Woodruff v. State Farm Mut. Auto. Ins. Co., 260 N.C. 723, 133 S.E.2d 704 (1963).

Family Member Exclusion. — Insurance policy's "family member" exclusion for UM coverage is repugnant to the purpose of UM and UIM coverage and is therefore invalid. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

Where a person is injured through the negligence of an insured family member while riding with that family member in an insured vehicle, the Financial Responsibility Act prevents the operation of a family member exclusion in the policy's liability section to bar coverage. Cartner v. Nationwide Mut. Fire Ins. Co., 123 N.C. App. 251, 472 S.E.2d 389 (1996).

Two public policies are inherent in subsection (e); first, the subsection relieves the employer of the burden of paying double premiums (one to its workers' compensation carrier and one to its automobile liability policy carrier), and second, the section denies the windfall of a double recovery to the employee. Manning v. Fletcher, 324 N.C. 513, 379 S.E.2d 854, rehearing denied, 325 N.C. 277, 384 S.E.2d 517 (1989).

Scope of Exclusion Under Subsection (e). — The revision of subsection (e) of this section indicates a legislative intent to broaden the scope of exclusion to include not only the situation in which the injured party might otherwise receive both workers' compensation payments and liability payments on behalf of the insured, but also the situation in which the injured party, as an insured under the uninsured coverage of a liability policy, might otherwise receive workers' compensation benefits as well as uninsured coverage payments for the same injury. Manning v. Fletcher, 324 N.C. 513, 379 S.E.2d 854, rehearing denied, 325 N.C. 277, 384 S.E.2d 517 (1989).

Applicability of Exclusions of Subsection (e) to Uninsured and Underinsured Coverages. — The location of subsection (e) in this section and its reference to a "motor vehicle liability policy" shows a legislative intent that the exclusion permitted by subsection (e) be applicable to all subdivisions of subsection (b), including the uninsured and underinsured coverages defined therein. Manning v. Fletcher, 324 N.C. 513, 379 S.E.2d 854, rehearing denied, 325 N.C. 277, 384 S.E.2d 517 (1989).

Subsection (e) permits an insurance carrier to reduce underinsured motorist coverage liability in a business auto insurance policy by amounts paid to the insured as workers' compensation benefits. Manning v. Fletcher, 324 N.C. 513, 379 S.E.2d 854, rehearing denied, 325 N.C. 277, 384 S.E.2d 517 (1989).

Advancement of Funds. — Insurer could elect to advance to its insured the liability limits of a tortfeasor's policy and thereby preserve its subrogation rights against the tortfeasor. N.C. Farm Bureau Mut. Ins. Co. v. Edwards, 154 N.C. App. 616, 572 S.E.2d 805, 2002 N.C. App. LEXIS 1514 (2002).

Insurable Interest Is Essential to Validity of Contract. — It is a fixed rule of insurance law that an insurable interest on the part of the person taking out the policy is essential to the validity and enforceability of the insurance contract. Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708, cert. denied, 282 N.C. 153, 191 S.E.2d 759 (1972).

Who Has Insurable Interest. — A person has an insurable interest in the subject matter insured where he has such a relation or connection with, or concern in, such subject matter that he will derive pecuniary benefit or advantage from its preservation, or will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against. Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708, cert. denied, 282 N.C. 153, 191 S.E.2d 759 (1972).

Where the general superintendent of the company used an automobile in the business of the insured as its employee and the decedent, an officer, director and owner of 98% of the stock of the insured, used the automobile in the business of the insured, applying the general principles of law to the facts, the company had an insurable interest in the automobile. Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708, cert. denied, 282 N.C. 153, 191 S.E.2d 759 (1972).

Definition of Owner's Policy. — An "owner's policy" is a motor vehicle liability policy that insures the holder against legal liability for injuries to others arising out of the ownership, use or operation of a motor vehicle owned by him or her. Progressive Am. Ins. Co. v. Vasquez, 350 N.C. 386, 515 S.E.2d 8 (1999).

Article Provides for Issuance of Owner's Policy and Operator's Policy. — This Article provides for motor vehicle insurance carriers to issue two types of motor vehicle liability policies. One is an owner's policy, which insures the holder against legal liability for injuries to others arising out of the ownership, use or operation of a motor vehicle owned by him; and the other is an operator's policy, which insures the holder against legal liability for injuries to others arising out of the use by him of a motor vehicle not owned by him. Woodruff v. State Farm Mut. Auto. Ins. Co., 260 N.C. 723, 133 S.E.2d 704 (1963).

And whether policy insures owner as an owner or as an operator depends on intent of parties. That intent must be ascertained from the language used in the written contract. Lofquist v. Allstate Ins. Co., 263 N.C. 615, 140 S.E.2d 12 (1965).

Whether one is insured as owner or as operator depends on intent of parties. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

Distinction Between Owner's Policy and Operator's Policy. — The distinction between an owner's policy of liability insurance and an operator's policy of liability insurance, the required provisions of each being set forth in this section, is pointed out in Howell v. Travelers Indem. Co., 237 N.C. 227, 74 S.E.2d 610 (1953), and Lofquist v. Allstate Ins. Co., 263 N.C. 615, 140 S.E.2d 12 (1965). Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

Coverage Under Owner's Policy. — An owner's policy protects the owner, as the named insured; it also protects any other person using the insured vehicle, with the owner's permission. Issuance of an owner's policy thus is generally to a "named insured" who is the "owner" of the described vehicle. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

Coverage of Owner's Policy Limited to Vehicle Described. — An owner's policy does not protect against liability resulting from the use of a motor vehicle not described in the policy. Lofquist v. Allstate Ins. Co., 263 N.C. 615, 140 S.E.2d 12 (1965).

Where an assigned risk policy of automobile liability insurance provided for the payment of additional premium for application of the policy to a newly acquired vehicle, and insurer, upon notification that insured had traded in the vehicle covered for another, advised insured that it would issue endorsement covering the second vehicle upon payment of additional premium in a stipulated amount, and there was no evidence that the additional premium was ever paid or the endorsement issued under the Motor Vehicle Safety and Financial Responsibility Act of 1947, the policy did not cover loss inflicted in the operation of the second vehicle, nor was insurer estopped from denying liability by reason of its failure to return the unearned premium on the original policy or its failure to cancel it. Miller v. New Amsterdam Cas. Co., 245 N.C. 526, 96 S.E.2d 860 (1957).

As an insurance policy held by the parents of the alleged tortfeasor limited liability coverage to damages arising out of ownership or use of covered autos, and did not deal with uninsured/underinsured motorist coverage, exclusion denying liability coverage for ownership, maintance, or use of any vehicles, other than the covered autos, was valid and not contrary to public policy. Griswold v. Integon Gen. Ins. Corp., 149 N.C. App. 301, 560 S.E.2d 861, 2002 N.C. App. LEXIS 202 (2002).

"Family Owned" vs. "Household Owned". — Although a "family-owned vehicle" or "household-owned vehicle" exclusion may be clear and unambiguous, it will not be upheld by our courts in the context of uninsured motorist/underinsured motorist coverage. Nationwide Mut. Ins. Co. v. Lankford, 118 N.C. App. 368, 455 S.E.2d 484 (1995).

Classes of Insureds. — There is nothing in this section which indicates that if a person is otherwise covered as a first class insured he loses this coverage if he is covered as a second class insured on another policy. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

The injured party in an automobile accident is an intended third-party beneficiary to the insurance contract between insurer and the tortfeasor/insured party. Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 472 S.E.2d 358 (1996).

As Is Coverage of Owner's Assigned Risk Policy. — This Article does not require an owner's assigned risk policy to cover any liability except that growing out of the operation of the motor vehicle described in the policy. Woodruff v. State Farm Mut. Auto. Ins. Co., 260 N.C. 723, 133 S.E.2d 704 (1963); Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

An owner's policy issued pursuant to the assigned risk statute of this State obligates the insurer to pay any liability the insured becomes liable to pay by reason of the operation of the automobile described in the policy up to the limit of $5,000. Woodruff v. State Farm Mut. Auto. Ins. Co., 260 N.C. 723, 133 S.E.2d 704 (1963).

There is no insurance separate and distinct from the ownership of the car because an owner's motor vehicle liability policy is a contract between the insurance company and the owner. Younts v. State Farm Mut. Auto. Ins. Co., 281 N.C. 582, 189 S.E.2d 137 (1972).

Coverage in a policy with respect to the use of other automobiles is in addition to the coverage required by this Article. Woodruff v. State Farm Mut. Auto. Ins. Co., 260 N.C. 723, 133 S.E.2d 704 (1963).

An assigned risk policy of automobile insurance specifying the vehicle covered by the policy does not cover another vehicle owned by insured in the absence of a provision in the policy for extension of coverage or approval by insurer of a change in the vehicle covered. Miller v. New Amsterdam Cas. Co., 245 N.C. 526, 96 S.E.2d 860 (1957), decided under repealed § 20-227, which covered the same subject matter as this section.

Policy Covering Only One of Two Vehicles Owned by Insured. — For a case applying the Motor Vehicle Safety and Financial Responsibility Act of 1947, where an insurance company issued an owner's policy of liability insurance upon an assigned risk covering only one of the two vehicles owned by insured, and the insurer was held not liable for damages caused during insured's operation of the other vehicle owned by him, see Graham v. Iowa Nat'l Mut. Ins. Co., 240 N.C. 458, 82 S.E.2d 381 (1954).

Admissibility of Insurer's Statements Regarding Coverage. — A written statement by the liability insurer creates a prima facie presumption of an operator's underinsurance as well as uninsurance. By establishing a prima facie presumption of underinsurance for such written statements, subdivisions (b)(3) and (b)(4) of this section implicitly make such statements admissible into evidence in order to trigger the operation of the presumption. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986).

Additional coverage is voluntary and the liability of the carrier for such coverage must be determined according to the terms and conditions of the binder. Roseboro Ford, Inc. v. Bass, 77 N.C. App. 263, 335 S.E.2d 214 (1985).

Stacking of Coverage. — Policy provisions which require that the terms of the policy should "apply separately" to separate automobiles insured under a single policy would allow stacking of medical payments coverages, except where there was unambiguous language establishing that the per accident limitations applied regardless of the number of automobiles insured under the policy or other unambiguous language tying the coverages to specific automobiles. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Stacking Fleet and Non-Fleet Policies. — The interpolicy stacking of fleet and nonfleet policies is permissible. Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

Interpolicy and Intrapolicy Stacking. — A person living in the household with relatives should be allowed to aggregate or stack, both interpolicy and intrapolicy, the underinsured motorist coverages of the relatives and to collect on those stacked coverages. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

Assigned Risk Policy Does Not Cover Replacement Vehicle Owned by Person Other Than Named Insured. — Nothing in the statute requires any carrier to extend the coverage of an assigned risk policy to a replacement vehicle owned by and registered to a person other than the original named insured owner of the vehicle originally described and insured. Beasley v. Hartford Accident & Indem. Co., 11 N.C. App. 34, 180 S.E.2d 381, aff'd, 280 N.C. 177, 184 S.E.2d 841 (1971).

Retention of Equitable Title by Purchaser Where Legal Title in Another. — To allow defeat of coverage by the technicality of placement of legal title in the purchaser's son, at the purchaser's direction and without the son's knowledge, while the purchaser retained all equitable interest in the vehicle, would defy the legislative intent to close all avenues of escape from the provisions of this Article. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

Where the vendee paid the entire purchase price, had exclusive possession and use of the vehicle, obtained the insurance coverage for it, and paid the premiums therefor, this sufficed to give him a clear equitable interest in the vehicle, and that equitable interest sufficed, under the particular facts and circumstances, to make him the "owner" of the vehicle within the coverage intent of the policy, interpreted in light of the purpose and intent of this Article. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

Transfer of Title to Vehicle. — The Responsibility Act makes no requirement that insurance, in case of transfer of title, follow the vehicle. Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962).

Nonowned Vehicle. — Since actual title had not passed, an insurer had to provide coverage to its insured while driving a nonowned vehicle, even though the insured was in the process of buying the vehicle, as North Carolina required actual title to pass for ownership under G.S. 20-4.01(26); the insurer was responsible to a passenger who was injured in a collision with a non-owned vehicle being driven by the insured. Hernandez v. Nationwide Mut. Ins. Co., 171 N.C. App. 510, 615 S.E.2d 425, 2005 N.C. App. LEXIS 1360 (2005), cert. denied, 360 N.C. 63, 621 S.E.2d 624 (2005).

Newly Acquired Vehicle. — If the policy was an owner's policy, defendant was not required to provide automatic insurance for a newly acquired motor vehicle. Lofquist v. Allstate Ins. Co., 263 N.C. 615, 140 S.E.2d 12 (1965).

Phantom Vehicle. — This section does not provide for uninsured motorist coverage where a phantom vehicle allegedly caused a collision between two other automobiles, but made no physical contact with either of the other automobiles. Andersen v. Baccus, 109 N.C. App. 16, 426 S.E.2d 105 (1993), modified on other grounds, 335 N.C. 526, 439 S.E.2d 136 (1994).

The legislature never intended for subdivisions (b)(3) and (b)(4) of this section to provide coverage where plaintiff was injured by an unknown/uninsured motorist without making contact with the unknown motorist's vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

An unidentified motor vehicle is statutorily treated as an uninsured motor vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

The statutory requirement for automatic insurance for 30 days for a motor vehicle acquired by an "operator" is as much a part of the policy as if expressly written therein. Lofquist v. Allstate Ins. Co., 263 N.C. 615, 140 S.E.2d 12 (1965).

"Accident". — The word "accident" as used in this section with reference to compulsory insurance is used in the popular sense and means any unfortunate occurrence causing injury for which the insured is liable. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

"Arising Out of" Ownership, Maintenance or Use of Automobile. — Where a policy provision speaks of liability "arising out of the ownership, maintenance or use" of a motor vehicle, the words "arising out of" are not words of narrow and specific limitation but are broad, general, and comprehensive terms affecting broad coverage. They are intended to, and do, afford protection to the insured against liability imposed upon him for all damages caused by acts done in connection with or arising out of such use. Fidelity & Cas. Co. v.

North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

The words "arising out of" are words of much broader significance than "caused by." They are ordinarily understood to mean "originating from," "having its origin in," "growing out of," or "flowing from," or in short, "incident to," or "having connection with" the use of the automobile. Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

For purposes of determining whether an injury is covered by policy or statutory language extending coverage to loss "arising out of the use" of a motor vehicle, the use need not be the proximate cause of the injury in the narrow legal sense. Coverage will be extended if there is a reasonable causal connection between the use and the injury. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 N.C. 534, 350 S.E.2d 66 (1986).

The test for determining whether an automobile liability policy provides coverage for an accident is not whether the automobile was a proximate cause of the accident. Instead, the test is whether there is a causal connection between the use of the automobile and the accident. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 318 N.C. 534, 350 S.E.2d 66 (1986).

Personal automobile liability insurance policy provided compulsory liability coverage to a child who was injured when he was struck by a non-insured car while at a repair shop to have the insured car repaired, because a sufficient causal connection between the use and the injuries existed for purposes of G.S. 20-279.21(b)(2); a showing of proximate causation was not required. Integon Nat'l Ins. Co. v. Ward, 184 N.C. App. 532, 646 S.E.2d 395, 2007 N.C. App. LEXIS 1463 (2007).

Where the cause of injury is distinctly independent of the use of the vehicle, no causal connection can be said to exist, and coverage will not be afforded. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 N.C. 534, 350 S.E.2d 66 (1986).

The terms "ownership, maintenance and use" should not be treated as mere surplusage. They were placed in the policy in order to cover situations distinct and separate from any other term. Williams v. Nationwide Mut. Ins. Co., 269 N.C. 235, 152 S.E.2d 102 (1967); Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

When a policy is silent on the point, loading and unloading is using an insured motor vehicle within the terms of the omnibus insurance clause, which insures against loss arising out of the ownership, maintenance and use of a motor vehicle. Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

Ownership, Maintenance, or Use Requirement Written Into Every Policy. — An automobile liability policy providing that it would "pay damages for bodily injury or property damage for which any insured becomes responsible" meant damages arising out of the ownership, maintenance, or use of such motor vehicle, since the provisions of the Financial Responsibility Act were written into the policy. Nationwide Mut. Ins. Co. v. Webb, 132 N.C. App. 524, 512 S.E.2d 764 (1999).

The "use" of a vehicle includes its loading and unloading and all persons actively engaged in the loading and unloading with the permission of the named insured are additional insureds under policy omnibus clauses. Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

"Using" a Vehicle. — Where plaintiff was struck while walking on the shoulder of the road in search of mechanical assistance after the vehicle he was driving broke down, plaintiff was "using" the vehicle at the time of the accident. As such, plaintiff was an insured of the insurance company at the time of the accident. Falls v. North Carolina Farm Bureau Mut. Ins. Co., 114 N.C. App. 203, 441 S.E.2d 583, cert. denied, 337 N.C. 691, 448 S.E.2d 521 (1994).

Van which child had just left when she was hit by a truck was in "use" at the time of the accident where there was a casual connection between the use of the van and the accident, in that it was because van was parked where it was, child had to cross the roadway, therefore auto policy provided coverage. Nationwide Mut. Ins. Co. v. Davis, 118 N.C. App. 494, 455 S.E.2d 892 (1995).

Where an insured was towing his disabled truck with his car, the insured was using the truck when an accident occurred, thereby giving rise to liability coverage under an insurance policy for both the truck and the car. Floyd v. Integon Gen. Ins. Corp., 152 N.C. App. 445, 567 S.E.2d 823, 2002 N.C. App. LEXIS 916 (2002).

Regular and Normal Use of a Vehicle. — In order for an injury to be compensable there must be a causal connection between the use of the vehicle and the injury; this connection is shown if the injury is the natural and reasonable consequence of the vehicle's use; however, an injury is not a "natural and reasonable consequence of the use" of the vehicle if the injury is the result of something wholly disassociated from, independent of, and remote from the vehicle's normal use. Clearly, an automobile chase with guns blazing is not a regular and normal use of a vehicle. Scales v. State Farm Mut. Auto. Ins. Co., 119 N.C. App. 787, 460 S.E.2d 201 (1995).

Injuries to a bicyclist caused by a soda bottle intentionally thrown from an insured vehicle by a passenger did not arise out of the use of a vehicle; therefore, the insured's automobile liability policy did not cover the incident. Nationwide Mut. Ins. Co. v. Webb, 132 N.C. App. 524, 512 S.E.2d 764 (1999).

Phrase "applicable limits of liability under the owner's policy," found in subdivision (b)(4), which deals exclusively with underinsured motorist (UIM) coverage, refers to the limits of liability under plaintiff's UIM coverage. Following an automobile accident, a tortfeasor's liability coverage is called upon to compensate the injured plaintiff, who then turns to his own UIM coverage when the tortfeasor's liability coverage is exhausted. In this situation, the injured plaintiff's liability coverages are not applicable to the accident and a comparison to the plaintiff's liability coverage is inappropriate. Taken in context, the "liability limits" referred to are clearly those under the UIM coverage portion of the owners' policy. Harris ex rel. Freedman v. Nationwide Mut. Ins. Co., 332 N.C. 184, 420 S.E.2d 124 (1992).

The "applicable limits" are the sum of all underinsured motorist (UIM) coverages provided in the policy which are applicable to the plaintiff's claim. Given the natural and ordinary meaning of the plural form of the word limit, with reference to a single policy, "applicable limits" refers to all available UIM limits under the policy. Harris ex rel. Freedman v. Nationwide Mut. Ins. Co., 332 N.C. 184, 420 S.E.2d 124 (1992).

"Nonfleet" Vehicles. — Fire vehicles listed in policy were private passenger vehicles not used in insured's business and hence "nonfleet" vehicles to which the exception to intrapolicy stacking of subdivision (b)(4) as it read prior to 1991 did not apply. McCaskill v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 118 N.C. App. 320, 454 S.E.2d 842 (1995).

Making Repairs. — In an action on the uninsured motorists clause of an automobile insurance policy, where the allegations were to the effect that plaintiff, while underneath the uninsured vehicle, raised on blocks, making repairs, was injured when the owner removed a front wheel and the car fell or rolled upon plaintiff, it was held that repairs are a necessary incident to maintenance, and the allegations brought plaintiff within the coverage of the policy. Williams v. Nationwide Mut. Ins. Co., 269 N.C. 235, 152 S.E.2d 102 (1967).

Injuries to Third Party from Rifle Which Discharged While Being Removed. — Automobile liability policy which, when properly construed, provided coverage for damages arising out of the ownership, maintenance, or use of the insured's automobile provided coverage from injuries to third party resulting when rifle accidentally discharged while being removed from the motor vehicle by the insured. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 318 N.C. 534, 350 S.E.2d 66 (1986).

Where victim was accidentally shot by passenger while driving a truck owned by the passenger's employer, the company's insurance policy covered victim's injuries. Harford Fire Ins. Co. v. Pierce, 127 N.C. App. 123, 489 S.E.2d 179 (1997), appeal dismissed, 347 N.C. 576, 502 S.E.2d 592 (1998).

Injury in Reaching into Truck for Rifle. — Where the insured frequently used his insured truck for hunting, the transportation of firearms being an integral part of that activity, and at the time of the accident, the insured was reaching into the cab for his rifle in order to shoot a deer, the requisite causal connection between victim's injury and the use of the truck was present, and thus the injury arose out of the use of the truck so as to be within the coverage provided by the automobile liability insurance policy. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 N.C. 534, 350 S.E.2d 66 (1986).

Injuries Intentionally Inflicted Are Covered. — Injuries intentionally inflicted by the use of an automobile are within the coverage of a motor vehicle liability policy as defined by this section. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

The provisions of this section extend coverage to include liability for injuries intentionally inflicted by the use of an automobile. Allstate Ins. Co. v. Webb, 10 N.C. App. 672, 179 S.E.2d 803 (1971).

As Victim's Rights Are Not Derived Through Insured. — The victim's rights against the insurer are not derived through the insured as in the case of voluntary insurance, but are statutory and become absolute, under subdivision (f)(1), of this section on the occurrence of an injury covered by the policy. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

The purpose of compulsory liability insurance is not, like that of ordinary insurance, to save harmless the tort-feasor himself; therefore, there is no reason why the victim's right to recover from the insurance carrier should depend upon whether the conduct of its insured was intentional or negligent. Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654 (1964).

The victim's rights against the insurer are not derived through the insured. Such rights are statutory and become absolute upon the occurrence of injury or damage inflicted by the named insured, by one driving with his permission, or by one driving while in lawful possession of the named insured's car, regardless of whether or not the nature and circumstances of the injury are covered by the contractual terms of the policy. Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982).

But Insurer May Recover from Insured Amount Paid for Intentional Injuries. — Where, but for the provisions of this section, the insurer would not have been liable under its policy for injury intentionally inflicted by the use of an automobile, it could recover from the insured the amount paid to a claimant for such injury, and also the amount of its expenses. Allstate Ins. Co. v. Webb, 10 N.C. App. 672, 179 S.E.2d 803 (1971).

Insurer Is Liable for Property Damage Intentionally Inflicted by Insured. — An automobile insurer in this State is liable, within the maximum coverage required by this Article, for property damage caused by an insured who intentionally drives an automobile into plaintiff's property. Nationwide Mut. Ins. Co. v. Knight, 34 N.C. App. 96, 237 S.E.2d 341, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

An automobile insurer was required to compensate defendant for any property damage arising out of the intentional ramming of defendant's automobile by the insured. Nationwide Mut. Ins. Co. v. Knight, 34 N.C. App. 96, 237 S.E.2d 341, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

A wound caused by gunshots fired from the insured's moving automobile did not constitute an accident arising out of the ownership, maintenance or use of such automobile. Nationwide Mut. Ins. Co. v. Knight, 34 N.C. App. 96, 237 S.E.2d 341, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

There was no casual relationship between the ownership, maintenance and use of the insured's moving vehicle, and the injury sustained by the minor defendant as a result of gunshots fired from that moving vehicle. Nationwide Mut. Ins. Co. v. Knight, 34 N.C. App. 96, 237 S.E.2d 341, cert. denied, 293 N.C. 589, 239 S.E.2d 263 (1977).

Throwing an object from a car at someone on the side of the road was an independent act disassociated from the use of an automobile, for which the insurance policy did not provide coverage through it's "arising from the ownership maintenance or use of" language. Providence Wash. Ins. Co. v. Locklear ex rel. Smith, 115 N.C. App. 490, 445 S.E.2d 418 (1994).

Negligently Self-Inflicted Injury Not Compensable. — This section was not intended to compensate an insured for injury and damage negligently inflicted upon himself. Strickland v. Hughes, 273 N.C. 481, 160 S.E.2d 313 (1968).

Medical Payment Coverage. — The mandatory coverage required by this Article does not require the insurer to extend medical payment coverage beyond the terms of the policy to one who receives liability coverage solely by virtue of this Article. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

That each driver in a two-car collision would recover from the other's insurance carrier was not in the legislative contemplation when the legislature passed this Article. Moore v. Young, 263 N.C. 483, 139 S.E.2d 704 (1965); McKinney v. Morrow, 18 N.C. App. 282, 196 S.E.2d 585, cert. denied, 283 N.C. 665, 197 S.E.2d 874 (1973).

"Other Insurance" Provision Held Valid. — A provision in a liability policy excluding coverage if the accident in question is covered by other insurance does not contravene the North Carolina Financial Responsibility Law. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1968), commented on in 46 N.C.L. Rev. 433; Government Employees Ins. Co. v. Lumbermens Mut. Cas. Co., 269 N.C. 354, 152 S.E.2d 445 (1967).

Victim's Right to Recover Is Statutory. — Under the Motor Vehicle and Financial Responsibility Act the victim's right to recover against the insurer is not derived through the insured, as in cases of voluntary insurance; his right to recover is statutory. Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973).

And becomes absolute upon occurrence of an injury covered by the policy. Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co., 283 N.C. 87, 194 S.E.2d 834 (1973).

Under subdivision (f)(1) of this section, if insured becomes legally obligated for the payment of damages on account of a collision, insurer's liability becomes absolute as of the date of the collision if the policy is then valid and in force, and subsequent violations of policy provisions by the insured cannot affect the liability of insurer to a person injured in such collision as the result of insured's negligence, although insured may be liable to insurer for damages resulting to insurer as the result of breach of the policy provision. Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

Under this section insurer's liability (within the limits of the compulsory coverage) for the payment of the damages for which insured was "legally obligated" became absolute when the injured party's car was damaged, at which time the policy issued by insurer to insured was in full force and effect. Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962).

The victim's rights under the act against

the insurer are not derived through the insured, as in the case of voluntary insurance. Such rights are statutory and become absolute upon the occurrence of injury or damage inflicted by the named insured, by one driving with his permission, or by one driving while in lawful possession of the named insured's car, regardless of whether or not the nature or circumstances of the injury are covered by the contractual terms of the policy. Engle v. State Farm Mut. Auto. Ins. Co., 37 N.C. App. 126, 245 S.E.2d 532, cert. denied, 295 N.C. 645, 248 S.E.2d 250 (1978).

Effect of Issuance of Form FS-1. — By the issuance of an FS-1 an insurer represents that it has issued and there is in effect an owner's motor vehicle liability policy. Harris v. Nationwide Mut. Ins. Co., 261 N.C. 499, 135 S.E.2d 209 (1964).

By the issuance of an FS-1, the insurer represents that everything requisite for a binding insurance policy has been performed, including payment, or satisfactory arrangement for payment, of premium. Once the FS-1 has been issued, nonpayment of premium, nothing else appearing, is no defense in a suit by a third party beneficiary against insurer. Harris v. Nationwide Mut. Ins. Co., 261 N.C. 499, 135 S.E.2d 209 (1964).

As between insurer and insured, the issuance by insurer of Form FS-1 stating thereon that insurance was effective, does not estop insurer from denying that the policy was in force or that notice of the accident was given as required by the policy. Harris v. Nationwide Mut. Ins. Co., 261 N.C. 499, 135 S.E.2d 209 (1964).

Cause of Action Arises at Time of Collision. — The provisions of subdivision (f)(1) of this section support the statement of law that any cause of action which a plaintiff may acquire against defendant as a result of a collision arises at the time of the collision, and any right which he may claim against defendant under the laws of this State and under the uninsured motorists insurance coverage of the policy must be determined by the facts existing at the time of the collision. Hardin v. American Mut. Fire Ins. Co., 261 N.C. 67, 134 S.E.2d 142 (1964).

Effect of Policy Violations. — Under subdivision (f)(1) of this section, policy violations do not defeat or avoid the policy in respect of a plaintiff's right to recover from defendant insurer the amount of the judgment establishing insured's legal liability to plaintiff. Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

As to the compulsory coverage provided by a motor vehicle liability policy as defined in this section, issued as proof of financial responsibility as defined in G.S. 20-279.1, subdivision (f)(1) of this section provides explicitly that "no violation of said policy shall defeat or void said policy." Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960); Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

Under subdivision (f)(1) of this section, insured's failure to comply with policy provisions as to notice of accident and of suit did not defeat the injured party's right to recover from the insurer the amount of a judgment by which insured's legal obligation to the insured party was finally determined. Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962).

No violation of the provisions of an owner's policy as an assigned risk will void the policy where the liability thereunder has been incurred by reason of the insured's operation of the automobile described in the policy. Woodruff v. State Farm Mut. Auto. Ins. Co., 260 N.C. 723, 133 S.E.2d 704 (1963).

Subsection (f) provides that except with respect to liability insurance written under the assigned risk plan, the liability of the insurance carrier shall be the extent of coverage required by this Article become absolute when the injury or damage covered by motor vehicle liability occurs, and no violation of said policy shall defeat or void said policy. Beasley v. Hartford Accident & Indem. Co., 11 N.C. App. 34, 180 S.E.2d 381, aff'd, 280 N.C. 177, 184 S.E.2d 841 (1971).

Driver's admitted failure to forward copies of notices and legal papers to insurance company did not constitute a violation of its contract and did not void any coverage on behalf of the insured above the compulsory amount; this section provides that violation of an insurance policy on the part of an insured cannot be used by the insurer to void the compulsory coverage required by the State. Aetna Cas. & Sur. Co. v. Welch, 92 N.C. App. 211, 373 S.E.2d 887 (1988).

Fraud in Application. — As to coverage required by the Financial Responsibility Act, fraud in an application for motor vehicle liability insurance is not a defense to the insurer's liability once injury has occurred. Hartford Underwriters Ins. Co. v. Becks, 123 N.C. App. 489, 473 S.E.2d 427 (1996).

Insurer not liable on retroactive policy fraudulently procured after accident occurred. — Judgment declaring that an insurer was obligated to provide liability coverage for accident was error under circumstances in which, on the day of the accident, after the accident had occurred, the driver went to the insurer's office and tendered the past due premium to the local agent, but did not tell the insurer about the accident; G.S. 20-279.21(f)(1) presupposed the existence of a policy at the time of injury or damage. An insurance company was not liable under an automobile insurance policy when a person fraudulently procured retroactive liability insurance after an accident occurred. N.C. Farm Bureau Mut. Ins. Co. v. Simpson, — N.C. App. —, 678 S.E.2d 753, 2009 N.C. App. LEXIS 1087 (July 7, 2009).

Liability Under Assigned Risk Policy Becomes Absolute When Injury or Damage Occurs. — As provided in subdivision (f)(1) of this section liability becomes absolute when a plaintiff's injury and damage occur, notwithstanding subsequent violations by the insured under an assigned risk policy of his obligations to the insurance company under the policy provisions. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967), decided under this section as it stood before the 1967 amendments thereto.

And Insurer Is Deprived of Defenses Otherwise Available Under Standard Policy Provisions. — Subdivision (f)(1) of this section, as interpreted and applied by the Supreme Court, deprives the insurer under an assigned risk policy of the defenses otherwise available under its standard policy provisions. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967), decided under this section as it stood before the 1967 amendments thereto.

And This Provision Does Not Violate State or Federal Constitution. — Subdivision (f)(1) of this section, when applied to an assigned risk policy issued in compliance with the plan set forth in former G.S. 20-279.34 and regulations pursuant thereto, does not deprive an insurance company of its property without due process of law and otherwise than by the law of the land in contravention of U.S. Const., Amend. XIV and N.C. Const., Art. I, § 1 and 19. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967), decided under this section as it stood before the 1967 amendments thereto.

Policy Provision Requiring Forwarding of Suit Papers Is Valid. — Policy provisions in an insurance contract requiring prompt forwarding of legal process as a condition precedent to recovery on the policy are valid so long as they do not conflict with this Article. Rose Hill Poultry Corp. v. American Mut. Ins. Co., 34 N.C. App. 224, 237 S.E.2d 564 (1977).

Hence, Failure to Forward Suit Papers Relieves Insurer of Liability. — While no decision of the Supreme Court involving a policy provision, "If claim is made or suit is brought against the Insured, he shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative," has come to the court's attention, decisions in other jurisdictions hold this is an unambiguous, reasonable and valid stipulation, and that, unless the insured or his judgment creditor can show compliance by the insured with this policy requirement, the insurer is relieved of liability. Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

Unless Insurer Loses Right to Defeat Recovery by Waiver or Estoppel. — An automobile liability insurer may, by waiver or estoppel, lose its right to defeat a recovery under a liability policy because of the insured's failure to comply with the policy provision as to the forwarding of suit papers. Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

The essential elements of a waiver are: (1) The existence, at the time of the alleged waiver, of a right, advantage or benefit; (2) the knowledge, actual or constructive, of the existence thereof; and (3) an intention to relinquish such right, advantage or benefit. Clemmons v. Nationwide Mut. Ins. Co., 267 N.C. 495, 148 S.E.2d 640 (1966).

Failure to Forward Suit Papers Did Not Defeat Insurer's Liability to Third Party. — The insured's failure under the terms of a policy to forward suit papers or otherwise notify the insurer of an action instituted in another state by an injured third party did not defeat or void the insurer's liability under the policy with respect to the third party. Rose Hill Poultry Corp. v. American Mut. Ins. Co., 34 N.C. App. 224, 237 S.E.2d 564 (1977).

But Relieved Insurer of Liability to Insured. — The insured's failure under the terms of a policy to forward suit papers or otherwise notify the insurer of an action instituted in another state by an injured third party relieved the insurer of its obligations under the policy to afford protection for the insured. The insured was not the innocent victim this Article was designed to protect, and thus the provision requiring forwarding of legal process was not in conflict with the purpose of this Article. Rose Hill Poultry Corp. v. American Mut. Ins. Co., 34 N.C. App. 224, 237 S.E.2d 564 (1977).

Purpose of Requirement That Plaintiff Give Notice to Assigned Risk Insurer. — A manifest purpose of subdivision (f)(1) of this section is to require the plaintiff to give the insurer of assigned risk or Reinsurance Facility individuals notice of actions brought against such persons so that the insurer may protect its interests. Love v. Nationwide Mut. Ins. Co., 45 N.C. App. 444, 263 S.E.2d 337, cert. denied, 300 N.C. 198, 269 S.E.2d 617 (1980).

Notice to Insurer Not Required under Subdivision (f)(1) When Insured Not Assigned Risk Insurer. — Plaintiff was not required to give the insurer the registered notice required by subdivision (f)(1) because the insured was not an "assigned risk insured" under the statute. To hold otherwise would require every plaintiff to send copy of summons and complaint by registered mail to the carrier of the liability insurance of the owner of the vehicle involved in every accident resulting in litigation to avoid the pitfall of the possibility of the vehicle involved being a replacement vehicle registered in a different name than the applicant for assignment of risk. This was obviously not intended by the General Assembly. Beasley v. Hartford Accident & Indem. Co., 11 N.C. App. 34, 180 S.E.2d 381, aff'd, 280 N.C. 177, 184 S.E.2d 841 (1971).

Plaintiff's Failure to Serve Insurer Did Not Render Judgment Against Insured Void. — Where a default judgment was entered against an insured in an individual's negligence action, the trial court did not abuse its discretion in denying the intervening insurer's motion to set aside the judgment as void under G.S. 1A-1, Rule 60(b)(4) on the ground that the individual who sued the insured had not given the insurer proper notification of the suit under G.S. 20-279.21(b)(3), as the insurer failed to show that the lack of notice to the insurer deprived the trial court of jurisdiction or authority to enter the default judgment against the insured, or otherwise rendered the judgment void. Barton v. Sutton, 152 N.C. App. 706, 568 S.E.2d 264, 2002 N.C. App. LEXIS 976 (2002).

Default Judgment. — "Default judgment," as this term is used in subdivision (f)(1) of this section, must be construed so as to include all judgments obtained where an insured person falling within the provisions of this subdivision has not timely filed a responsive pleading or has otherwise made himself subject to a G.S. 1A-1, Rule 55 default. Love v. Nationwide Mut. Ins. Co., 45 N.C. App. 444, 263 S.E.2d 337, cert. denied, 300 N.C. 198, 269 S.E.2d 617 (1980).

The giving of notice of a default judgment is a condition precedent to maintaining a subsequent action against the insurer on the judgment, and the failure to provide that notice operates as a bar to the action. Love v. Nationwide Mut. Ins. Co., 45 N.C. App. 444, 263 S.E.2d 337, cert. denied, 300 N.C. 198, 269 S.E.2d 617 (1980).

A trial which results in findings or a verdict against a nonappearing defendant does not take the resulting judgment for the appearing party out of the "default" category within the meaning of subdivision (f)(1) of this section. Love v. Nationwide Mut. Ins. Co., 45 N.C. App. 444, 263 S.E.2d 337, cert. denied, 300 N.C. 198, 269 S.E.2d 617 (1980).

Subdivision (f)(1) Was Not Intended to Protect Breach of Contract. — Although a manifest purpose of subdivision (f)(1) of this section is to require the plaintiff to give the insurer of assigned risk or reinsurance facility individuals notice of actions brought against such persons so that the insurer may protect its interests, it was not within the contemplation of the legislature that subdivision (f)(1) would protect brokers or agents in breach of contract for failure to perform a contract to perform insurance. Johnson v. Smith, 58 N.C. App. 390, 293 S.E.2d 644 (1982).

Absolute Obligation to Defend. — The obligation of a liability insurer to defend an action brought by an injured third party against the insured is absolute when the allegations of the complaint bring the claim within the coverage of the policy. Indiana Lumbermen's Mut. Ins. Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986).

No Statutory Obligation to Defend Insured. — An insurer's duty to defend its insured in a motor vehicle liability action arises from the language of the insurance contract since there exists no statutory obligation in North Carolina to provide a defense for the insured. Brown v. Lumbermens Mut. Cas. Co., 90 N.C. 464, 369 S.E.2d 367, aff'd, 326 N.C. 387, 390 S.E.2d 150 (1990), cert. denied, 323 N.C. 363, 373 S.E.2d 541 (1988).

There is no statutory requirement that an insurance company provide its insured with a defense. Brown v. Lumbermens Mut. Cas. Co., 326 N.C. 387, 390 S.E.2d 150 (1990).

But Duty Can Be Assumed Voluntarily. — Where an insurance company utilized subdivision (b)(3)a to provide a defense to the insured party, it was a party in the tort actions, although unnamed; therefore, although it was not required to defend the lawsuit, but chose to do so, by so doing it became a defendant, liable for attorney's fees and costs. Turnage ex rel. Turnage v. Nationwide Mut. Ins. Co., 109 N.C. App. 300, 426 S.E.2d 433, aff'd per curium, 335 N.C. 168, 435 S.E.2d 772 (1993).

Duty to Defend Separate from Duty to Indemnify. — It is a well recognized legal principle that an insurer's duty to defend its insured is separate from and broader than the insurer's duty to indemnify the insured. Brown v. Lumbermens Mut. Cas. Co., 90 N.C. 464, 369 S.E.2d 367, cert. denied, 323 N.C. 363, 373 S.E.2d 542, cert. denied, 323 N.C. 363, 373 S.E.2d 541 (1988).

Refusal of Insurer to Defend. — Where a liability insurer denies liability for a claim asserted against the insured and unjustifiably refuses to defend an action therefor, the insured is released from a provision of the policy against settlement of claims without the insurer's consent, and from a provision making the liability of the insurer dependent on the obtaining of a judgment against the insured; and that under such circumstances, the insured may make a reasonable compromise or settlement in good faith without losing his right to recover on the policy. Nixon v. Liberty Mut. Ins. Co., 255 N.C. 106, 120 S.E.2d 430 (1961).

If insured in a liability policy gives timely notice of a suit against him within the coverage of the liability policy, and insurer refuses to defend such suit, insured is entitled to recover of insurer the amount he is reasonably required to spend by virtue of the failure of insurer to defend the suit. Harris v. Nationwide Mut. Ins. Co., 261 N.C. 499, 135 S.E.2d 209 (1964).

An insurer's refusal to defend is unjustified if it is determined that the action is in fact within the coverage of the policy. This is so even if the refusal to defend is based on the insurer's honest but mistaken belief that the claim is outside the policy coverage. Indiana Lumbermen's Mut. Ins. Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986).

Where the jury's verdict determined the action was within the coverage of the policy, defendant insurer's refusal to defend was unjustified; therefore, insurer could not, if it had the opportunity, assert that is was an honest mistake since that was irrelevant. Wilson v. State Farm Mut. Auto. Ins. Co., 92 N.C. App. 320, 374 S.E.2d 446 (1988), rev'd on other grounds, 327 N.C. 419, 394 S.E.2d 807 (1990), modified on reh'g, 329 N.C. 262, 404 S.E.2d 852 (1991).

Insurer Unjustifiedly Refusing to Defend Not Entitled to Invoke "No Action" Provision. — Where claim against insured was within the coverage of insurer's policy, insurer's refusal to defend the action was unjustified, and therefore insurer was not entitled to successfully invoke the "no action" provision in its policy as a defense. Indiana Lumbermen's Mut. Ins. Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986).

Defendant-insurer was properly permitted to participate in the trial where there was no evidence that the insurer failed to participate in the pre-trial conference. Warren v. GMC, 142 N.C. App. 316, 542 S.E.2d 317, 2001 N.C. App. LEXIS 80 (2001).

Settlement of Claims by Insurer. — This section, which contains a provision expressly authorizing insurance companies to make settlement with claimants, is not any indication that prior to its effective date liability insurers were prohibited from settling with some of several claimants for the protection of their insured. Alford v. Textile Ins. Co., 248 N.C. 224, 103 S.E.2d 8 (1958); Braddy v. Nationwide Mut. Liab. Ins. Co., 122 N.C. App. 402, 470 S.E.2d 820 (1996).

When exercised in good faith, subdivision (f)(3) of this section, authorizing the insurer to negotiate and settle claims, is valid and binding on the insured. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

A provision in a liability policy that insurer might negotiate and settle any claim or suit was not proscribed or rendered void under repealed G.S. 20-227 as it stood in 1947. Alford v. Textile Ins. Co., 248 N.C. 224, 103 S.E.2d 8 (1958).

A liability insurance carrier may settle part of multiple claims arising from the negligence of its insured, even though such settlements result in preference by exhausting the fund to which an injured party whose claim has not been settled might otherwise look for payment, provided the insurer acts in good faith and not arbitrarily, and the burden is upon a claimant whose claim is not paid in full because of prior payment made by insurer in settlements of other claims, to allege and prove bad faith on the part of the insurer. Alford v. Textile Ins. Co., 248 N.C. 224, 103 S.E.2d 8 (1958), decided under repealed § 20-227.

Where an insurance carrier makes a settlement in good faith, such settlement is binding on the insured as between him and the insurer, but such settlement is not binding as between the insured and a third party where the settlement was made without the knowledge or consent of the insured or over his protest, unless the insured in the meantime has ratified such settlement. Bradford v. Kelly, 260 N.C. 382, 132 S.E.2d 886 (1963).

A payment by insurer in settlement of the claim of one motorist against insured motorist, solely for the purpose of terminating the liability of insurer and reserving the insured motorist's rights, does not preclude the insured motorist from thereafter maintaining an action against the other. Gamble v. Stutts, 262 N.C. 276, 136 S.E.2d 688 (1964).

The duty of the insurer in the exercise of its contract right to settle a pending liability claim or suit is to act diligently and in good faith in effecting settlements within policy limits and, if necessary to accomplish that purpose, to pay the full amount of the policy. Coca-Cola Bottling Co. v. Maryland Cas. Co., 325 F. Supp. 204 (W.D.N.C. 1971).

Every claim has some settlement value, but the existence of issues for the jury rather than the certainty of nonsuit does not demonstrate bad faith or even lack of due care if the insurer fails to settle. Coca-Cola Bottling Co. v. Maryland Cas. Co., 325 F. Supp. 204 (W.D.N.C. 1971).

Although the insurer may be unreasonable in not settling as seen in retrospect, it is liable for recovery beyond its policy limits only if it acts with wrongful or fraudulent purpose or with lack of good faith; an honest mistake of judgment is not actionable. Coca-Cola Bottling Co. v. Maryland Cas. Co., 325 F. Supp. 204 (W.D.N.C. 1971).

Insurance counsel do not have to be omniscient, and their opinions, whether they support or cast doubt on the action of the insurer in not settling, do not determine the issue of liability above policy limits. Coca-Cola Bottling Co. v. Maryland Cas. Co., 325 F. Supp. 204 (W.D.N.C. 1971).

A release or settlement of an action against the tortfeasor does not vitiate the express statutory terms of subdivision (b)(4) of this section, such that the action can continue with the insurance carrier remaining as an unnamed defendant. Sellers v. North Carolina Farm Bureau Mut. Ins. Co., 108 N.C. App. 697, 424 S.E.2d 669 (1993).

Because plaintiff was afforded the opportunity to be heard on his claim for damages against the tortfeasor, and his derivative claim for UIM coverage against his insurer sounded in tort, plaintiff's due process rights were not violated by allowing his insurer to proceed as an unnamed party after it settled with tortfeasor. Braddy v. Nationwide Mut. Liab. Ins. Co., 122 N.C. App. 402, 470 S.E.2d 820 (1996).

Plaintiff insurer was precluded from asserting its policy defenses by its refusal to defend where, due to the "possibility" that the claim would be covered by the policy, the insurer's refusal to defend was unjustified. Naddeo v. Allstate Ins. Co., 139 N.C. App. 311, 533 S.E.2d 501, 2000 N.C. App. LEXIS 890 (2000).

Action by Insured Against Other Motorist After Settlement. — See Bradford v. Kelly, 260 N.C. 382, 132 S.E.2d 886 (1963).

Action by Insured Against Insurer. — A cause of action alleging breach of good faith will not lie when the insurer settles a claim, in spite of insured's protestations that the claimants acted fraudulently, within the monetary limits of the insured's policy; the insurer has the duty to consider the insured's interest but may act in its own interest in settlement of the claim. Cash v. State Farm Mut. Auto. Ins. Co., 137 N.C. App. 192, 528 S.E.2d 372, 2000 N.C. App. LEXIS 312 (2000).

Provision for Compulsory Arbitration Conflicts with Statute. — A provision in an insurance policy, in effect, ousting the jurisdiction of the court to judicially determine liability and damages and providing for compulsory arbitration between the insured and the company, if they do not agree, conflicts with the beneficent purposes of the uninsured motorist statute favorable to the insured, and the provision of the statute controls. Wright v. Fid. & Cas. Co., 270 N.C. 577, 155 S.E.2d 100 (1967).

An insurer may have reimbursement from a stranger to the insurance contract whose negligence caused the injuries and damages for which the insurer had paid as a result of liability imposed by statute. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

Policy Provision for Reimbursement by Insured. — Subsection (h) of this section does not compel reimbursement by the insured, it merely allows the insurer and the insured to enter into such an agreement. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

A policy provision providing for reimbursement by the insured is merely a contractual agreement between the parties to the policy and does not have the effect or force of a statute. Nationwide Mut. Ins. Co. v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

Counterclaim Against Insured Under Subsection (h). — In insured's action against insurer to recover for sums expended in defending a suit against insured within the coverage of the policy, insured's allegations of the payment of a sum to insurer's agent under agreement for the issuance of a binder do not relate to liability imposed by the Financial Responsibility Act, and therefore furnish no basis for a counterclaim against insured under subsection (h) of this section. Harris v. Nationwide Mut. Ins. Co., 261 N.C. 499, 135 S.E.2d 209 (1964).

Burden on Plaintiff to Prove Defendant Was Insured. — In order for the plaintiff to recover on the policy, the burden is on plaintiff to allege and prove that the defendant was insured under the policy on the date of the accident in which plaintiff was injured. Younts v. State Farm Mut. Auto. Ins. Co., 281 N.C. 582, 189 S.E.2d 137 (1972).

Liability Coverage Distinguished from Uninsured and Underinsured Coverage. — The statutory schemes operate on the realization that the very nature of liability insurance coverage is different from uninsured/underinsured motorist coverage. The former protects covered persons from the consequences of their own negligence; the latter protects covered persons from the consequences of the negligence of others. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

The statutory scheme for liability insurance is primarily vehicle-oriented while uninsured/underinsured motorist insurance is essentially person-oriented. Liability coverage is third-party insurance while uninsured/underinsured motorist coverage is first-party insurance. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

Duty of Insurer Where Policy Holder Has Minimum Limits Liability Insurance. — An insurance agent does not negligently breach a fiduciary duty to a policy holder who has a minimum limits automobile liability insurance policy if she does not explain to the policy holder that he would be eligible for UIM coverage if he increased his automobile liability insurance coverage above the statutory minimum limits. Phillips ex rel. Phillips v. State Farm Mut. Auto. Ins. Co., 129 N.C. App. 111, 497 S.E.2d 325 (1998), cert. denied, 348 N.C. 500, 510 S.E.2d 653 (1998).

Uninsured/Underinsured Motorist Coverages Not Required to Equal Liability or Medical Coverages. — The purpose of uninsured/underinsured motorist insurance differs from the purposes of medical payments insurance or liability insurance. Likewise, while the statutory scheme requires the insurance company to offer uninsured/underinsured motorist coverages only if liability coverages exceed the minimum statutory requirement and in an amount equal to the limits of bodily injury liability insurance, nothing in the statute requires that the scope of the coverage be the same. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

Reducing Defendant's Liability to Injured Plaintiff by Amount of Workers' Compensation Paid to Plaintiff Was Improper. — Where plaintiff's damages were established at amount far in excess of any kind of insurance that was available to her, reducing defendant's liability to her by worker's compensation she received would disserve dominant public policy behind Financial Responsibility Act (that of making insurance available for compensation of innocently injured accident victims) and leave unfulfilled plaintiff's purpose in buying her own coverage in first place; nothing in subsection (e) of this section suggests that General Assembly intended to authorize any such absurdity. Sproles v. Greene, 100 N.C. App. 96, 394 S.E.2d 691 (1990), rev'd on other grounds, Sproles v. Integon Insurance Co., 329 N.C. 603, 407 S.E.2d 497 (1991).

Subrogation of Workers' Compensation Insurance Carrier to Employer's Right to Payment of Proceeds from Uninsured/Underinsured Motorist Insurance. — Section 97-10.2 provides for subrogation of workers' compensation insurance carrier to employer's right, upon reimbursement of the employee, to any payment, including uninsured/underinsured motorist insurance proceeds, made to employee by or on behalf of a third party as a result of employee's injury. Ohio Cas. Group v. Owens, 99 N.C. App. 131, 392 S.E.2d 647 (1990), review denied, 327 N.C. 483, 396 S.E.2d 614 (1990), overruled by McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

Policy Exclusions Which Conflict with Motor Vehicles Safety and Financial Responsibility Act Are Unenforceable. — Where policy terms purporting to exclude certain risks from uninsured/underinsured coverage are in conflict with provisions of Motor Vehicle Safety and Financial Responsibility Act, such exclusions are unenforceable. Ohio Cas. Group v. Owens, 99 N.C. App. 131, 392 S.E.2d 647 (1990), review denied, 327 N.C. 483, 396 S.E.2d 614 (1990), overruled by McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

Minimum Coverage Requirements Not Violated by "Other Insurance" Clause. — The court rejected the contention that the plaintiff/insurance company's "other insurance" clause violated North Carolina law and public policy by allowing the defendant/insurer to defeat the statutory requirement of providing minimum limits of coverage under this section and paying only a pro rata share of an insurance claim. USAA Cas. Ins. Co. v. Universal Underwriters Ins. Co., 138 N.C. App. 684, 532 S.E.2d 250, 2000 N.C. App. LEXIS 789 (2000).

Fraud in Application Not a Defense as to Minimum Coverage Amounts. — As to the mandatory amount of motor vehicle liability insurance coverage required by this section, fraud in an application for insurance is not a defense to the insurer's liability once injury has occurred, but as to any amount of coverage in excess of the statutory minimum, fraud is a defense under common law or contract law principles. Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87, cert. denied, 329 N.C. 499, 407 S.E.2d 539 (1991).

But as to any coverage in excess of the statutory minimum, the insurer is not precluded by statute or public policy from asserting the defense of fraud. Such a defense, if successful, would insulate the insurer against liability as to both the insured, and the injured third party. Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87, cert. denied, 329 N.C. 499, 407 S.E.2d 539 (1991).

Two Classes of "Persons Insured." — Subdivision (b)(3) establishes two "classes" of "persons insured": (1) the named insured and, while resident of the same household, the spouse of the named insured and relatives of either, and (2) any person who uses with the consent, express or implied, of the named insured, the insured vehicle, and a guest in such vehicle. Members of the second class are "persons insured" for the purposes of uninsured motorist (UM) and underinsured motorist (UIM) coverage only when the insured vehicle is involved in the insured's injuries. Members of the first class are "persons insured" even where the insured vehicle is not involved in the insured's injuries. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

"Named Insured" Distinguished from Other Covered Persons. — The term, "named insured," appears frequently in this section in such a way as to distinguish the "named insured" from other covered persons. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

Operator Within Scope of Permission. — As an operator of one of garage automobiles within the scope of its permission, daughter of persons to whom car was loaned to was an insured under garage's insurance policy and insurer was responsible for providing liability coverage for her. Integon Indem. Corp. v. Universal Underwriters Ins. Co., 342 N.C. 166, 463 S.E.2d 389 (1995).

Coverage which is in addition to the mandatory requirements of the state are voluntary and are not subject to the requirements of the act. Voluntary coverage must be measured by the terms of the policy as written. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

Application of Voluntary Additional Coverage. — A policy insuring the owner of the vehicle hired by the named insured only if the actual use of the automobile is in the business of the named insured is beyond the requirements of the Motor Vehicle Safety and Financial Responsibility Act and is voluntary additional coverage. As such, it is to be applied according to its terms and limitations. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

Use by Prohibited Party. — This section did not impose coverage when owner's permittee gave possession to a third party who knew that he was prohibited from using the vehicle. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

Where the forecast of evidence before the trial court showed there was no collision or contact between the automobile driven by the unknown motorist, which allegedly caused accident, and any other automobile, including that driven by plaintiff's intestate, defendant insurance company was entitled to judgment as a matter of law. Andersen v. Baccus, 335 N.C. 526, 439 S.E.2d 136 (1994).

Applicability of Act Where Foreign Insurer Is Involved. — The Act was not triggered by a contract's conformity clause which stated that "if any provision of this policy is contrary to any law to which it is subject, such provision is hereby amended to conform thereto" where the defendant/insurance company was never authorized to transact business and issue insurance policies in North Carolina. The mere fact that the accident happened in North Carolina did not make the Florida policy subject to North Carolina law. Fortune Ins. Co. v. Owens, 351 N.C. 424, 526 S.E.2d 463, 2000 N.C. LEXIS 240 (2000).

Out of State Law Applied. — Although North Carolina's legislature, in subsection (b), has determined that family members are not to be excluded from primary or uninsured motorist/underinsured motorist coverage, where Tennessee law governed because significant connection existed with Tennessee and the connection with North Carolina was casual, family member exclusion in policy would be applied. Johns v. Automobile Club Ins. Co., 118 N.C. App. 424, 455 S.E.2d 466 (1995).

Payments made to the victim pursuant to under-insured or uninsured coverage are from a collateral source as defined in § 15B-2; an award under the Crime Victims Compensation Act, Chapter 15B, will be reduced to the extent that the economic loss will be recouped from under-insured or uninsured coverage. Onley v. Nationwide Mut. Ins. Co., 118 N.C. App. 686, 456 S.E.2d 882 (1995).

Liability Not Owed by Rental Company. — Where driver had an operative liability insurance policy meeting the requirements of the Financial Responsibility Act, and where car rental company specifically excluded liability insurance in the lease agreement, car rental company owed driver no liability coverage. Jeffreys v. Snappy Car Rental, Inc., 128 N.C. App. 171, 493 S.E.2d 767 (1997).

For other decisions under former statute, see Russell v. Lumbermen's Mut. Cas. Co., 237 N.C. 220, 74 S.E.2d 615 (1953); Howell v. Travelers Indem. Co., 237 N.C. 227, 74 S.E.2d 610 (1953); Sanders v. Chavis, 243 N.C. 380, 90 S.E.2d 749 (1956); Sanders v. Travelers Indem. Co., 144 F. Supp. 742 (M.D.N.C. 1956); Lynn v. Farm Bureau Mut. Auto. Ins. Co., 264 F.2d 921 (4th Cir. 1959).

Applied in Daniels v. Nationwide Mut. Ins. Co., 258 N.C. 660, 129 S.E.2d 314 (1963); Manning v. State Farm Mut. Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965); Abernethy v. Utica Mut. Ins. Co., 373 F.2d 565 (4th Cir. 1967); Beasley v. Hartford Accident & Indem. Co., 280 N.C. 177, 184 S.E.2d 841 (1971); McKinney v. Morrow, 18 N.C. App. 282, 196 S.E.2d 585 (1973); Nationwide Mut. Ins. Co. v. Chantos, 21 N.C. App. 129, 203 S.E.2d 421 (1974); Ford Marketing Corp. v. National Grange Mut. Ins. Co., 33 N.C. App. 297, 235 S.E.2d 82 (1977); Nationwide Mut. Ins. Co. v. Chantos, 298 N.C. 246, 258 S.E.2d 334 (1979); Tucker v. Peerless Ins. Co., 41 N.C. App. 302, 254 S.E.2d 656 (1979); Jones v. Nationwide Mut. Ins. Co., 42 N.C. App. 43, 255 S.E.2d 617 (1979); Caison v. Nationwide Ins. Co., 45 N.C. App. 30, 262 S.E.2d 296 (1980); Love v. Moore, 305 N.C. 575, 291 S.E.2d 141 (1982); Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984); State Farm Mut. Auto. Ins. Co. v. Blackwelder, 103 N.C. App. 656, 406 S.E.2d 301 (1991); Gurganious v. Integon Gen. Ins. Corp., 108 N.C. App. 163, 423 S.E.2d 317 (1992); North Carolina Farm Bureau Mut. Ins. Co. v. Knudsen, 109 N.C. App. 114, 426 S.E.2d 88 (1993); Wiggins v. Nationwide Mut. Ins. Co., 112 N.C. App. 26, 434 S.E.2d 642 (1993); Nationwide Mut. Ins. Co. v. Williams, 123 N.C. App. 103, 472 S.E.2d 220 (1996); Toole ex rel. Welch v. State Farm Mut. Auto. Ins. Co., 127 N.C. App. 291, 488 S.E.2d 833 (1997); Corbett v. Smith, 131 N.C. App. 327, 507 S.E.2d 303 (1998); Robinson v. Leach, 133 N.C. App. 436, 514 S.E.2d 567 (1999); Cash v. State Farm Mut. Auto. Ins. Co., 137 N.C. App. 192, 528 S.E.2d 372, 2000 N.C.

App. LEXIS 312 (2000); State Farm Mut. Auto. Ins. Co. v. Gaylor, 190 N.C. App. 448, 660 S.E.2d 104, 2008 N.C. App. LEXIS 821 (2008).

Cited in Eaves v. Universal Underwriters Group, 107 N.C. App. 595, 421 S.E.2d 191; Taylor v. Green, 242 N.C. 156, 87 S.E.2d 11 (1955); Muncie v. Travelers Ins. Co., 253 N.C. 74, 116 S.E.2d 474 (1960); Fidelity & Cas. Co. v. Jackson, 297 F.2d 230 (4th Cir. 1961); Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961); Aldridge v. State, 4 N.C. App. 297, 166 S.E.2d 485 (1969); In re North Carolina Auto. Rate Admin. Office, 278 N.C. 302, 180 S.E.2d 155 (1971); Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972); Love v. Moore, 54 N.C. App. 406, 283 S.E.2d 801 (1981); Shew v. Southern Fire & Cas. Co., 58 N.C. App. 637, 294 S.E.2d 233 (1982); Wall v. Nationwide Mut. Ins. Co., 62 N.C. App. 127, 302 S.E.2d 302 (1983); Gardner v. North Carolina State Bar, 316 N.C. 285, 341 S.E.2d 517 (1986); Nationwide Mut. Ins. Co. v. Land, 318 N.C. 551, 350 S.E.2d 500 (1986); Davidson v. Knauff Ins. Agency, Inc., 93 N.C. App. 20, 376 S.E.2d 488 (1989); Lockwood v. Porter, 98 N.C. App. 410, 390 S.E.2d 742 (1990); Bass v. North Carolina Farm Bureau Mut. Ins. Co., 100 N.C. App. 728, 398 S.E.2d 47 (1990); Nationwide Mut. Ins. Co. v. Silverman ex rel. Radja, 104 N.C. App. 783, 411 S.E.2d 152 (1991); Patrick v. Ronald Williams, Professional Ass'n, 102 N.C. App. 355, 402 S.E.2d 452 (1991); Wilson v. State Farm Mut. Auto. Ins. Co., 329 N.C. 262, 404 S.E.2d 852 (1991); United Servs. Auto. Ass'n v. Universal Underwriters Ins. Co., 104 N.C. App. 206, 408 S.E.2d 750 (1991); Leonard v. North Carolina Farm Bureau Mut. Ins. Co., 104 N.C. App. 665, 411 S.E.2d 178 (1991); Eury v. Nationwide Mut. Ins. Co., 109 N.C. App. 303, 426 S.E.2d 442 (1993); Watson v. American Nat'l Fire Ins. Co., 333 N.C. 338, 425 S.E.2d 696 (1993); Cagle v. Teachy, 111 N.C. App. 244, 431 S.E.2d 801 (1993); Hackett v. Bonta, 113 N.C. App. 89, 437 S.E.2d 687 (1993); Ragan v. Hill, 337 N.C. 667, 447 S.E.2d 371 (1994); Metropolitan Property & Cas. Ins. Co. v. Lindquist, 120 N.C. App. 847, 463 S.E.2d 574 (1995); Vasseur v. St. Paul Mut. Ins. Co., 123 N.C. App. 418, 473 S.E.2d 15 (1996); Grimsley v. Nelson, 342 N.C. 542, 467 S.E.2d 92 (1996); Martin v. Continental Ins. Co., 123 N.C. App. 650, 474 S.E.2d 146 (1996); Morgan v. State Farm Mut. Auto. Ins. Co., 129 N.C. App. 200, 497 S.E.2d 834 (1998); Reese v. Barbee, 134 N.C. App. 728, 518 S.E.2d 571, 1999 N.C. App. LEXIS 895 (1999); Anderson v. Atlantic Cas. Ins. Co., 134 N.C. App. 724, 518 S.E.2d 786 (1999); Levasseur v. Lowery, 139 N.C. App. 235, 533 S.E.2d 511, 2000 N.C. App. LEXIS 888 (2000); Moore v. Cincinnati Ins. Co., 147 N.C. App. 761, 556 S.E.2d 682, 2001 N.C. App. LEXIS 1248 (2001); N.C. Farm Bureau Mut. Ins. Co. v. Holt, 154 N.C. App. 156, 574 S.E.2d 6, 2002 N.C. App. LEXIS 1413 (2002); Erwin v. Tweed, 159 N.C. App. 579, 583 S.E.2d 717, 2003 N.C. App. LEXIS 1532 (2003); State Farm Fire & Cas. Co. v. Darsie, 161 N.C. App. 542, 589 S.E.2d 391, 2003 N.C. App. LEXIS 2257 (2003); Richardson v. Bank of Am., N.A., — N.C. App. —, 643 S.E.2d 410, 2007 N.C. App. LEXIS 809 (2007); Piles v. Allstate Ins. Co., 187 N.C. App. 399, 653 S.E.2d 181, 2007 N.C. App. LEXIS 2449 (2007).

II. THE OMNIBUS CLAUSE.

Editor's Note. *— Many of the cases under this analysis line were decided under this section as it stood before the enactment of Session Laws 1967, c. 1162, which inserted "or any other persons in lawful possession" in subdivision (b)(2) of this section.*

Legislative Intent. — The preamble to chapter 1162 of the 1967 Session Laws, which reinstated the words "or any other persons in lawful possession" in subdivision (b)(2) of this section, suggests very strongly that the reason for adding the quoted words was to alleviate the necessity of proving that the operator of a vehicle belonging to another had the express or implied permission of the owner to drive (the vehicle) on the very trip and occasion of the collision. Engle v. State Farm Mut. Auto. Ins. Co., 37 N.C. App. 126, 245 S.E.2d 532, cert. denied, 295 N.C. 645, 248 S.E.2d 250 (1978).

Construction of Provision Requiring "Omnibus Clause". — Statutes requiring the insertion in automobile liability policies of the "omnibus clause," extending the provisions of the policy to persons using the automobile with the express or implied permission of the named insured, reflect a clear-cut policy to protect the public. They should be construed and applied so as to carry out this policy. Chatfield v. Farm Bureau Mut. Auto. Ins. Co., 208 F.2d 250 (4th Cir. 1953), decided under repealed § 20-227, which covered the same subject matter as this section.

In subdivision (b)(2) the legislature intended no more radical coverage than is expressed in the moderate rule of construction, i.e., coverage shall include use with permission, express or implied. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962).

The omnibus clause has been interpreted by the Supreme Court of North Carolina according to the "moderate" rule rather than the "hell and high-water" rule, as recommended in 41 N.C.L. Rev. 232 (1963). Bailey v. General Ins. Co. of Am., 265 N.C. 675, 144 S.E.2d 898 (1965).

An omnibus clause should be construed liberally in favor of the insured and in accordance with the policy of the clause to protect the public. Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113, cert. denied, 282 N.C. 425, 192 S.E.2d 840 (1972).

Ambiguity in a policy which requires interpretation as to whether the policy provisions impose liability requires construction in favor of coverage and against the company. Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113 (1972).

In construing an omnibus clause, an injury cannot be said to arise out of the use of an automobile if it was directly caused by some independent act or intervening cause wholly disassociated from, independent of, and remote from the use of the automobile. Fidelity & Cas. Co. v. North Carolina Farm Bureau Mut. Ins. Co., 16 N.C. App. 194, 192 S.E.2d 113 (1972).

Lessor's fleet insurance policy did not exclude liability coverage for lessee, even though the lessee was insured under his own liability policy at the minimum limits, where the lessee was a person 'required by law to be an insured' within the meaning of the fleet policy. Integon Indem. Corp. v. Universal Underwriters Ins. Co., 131 N.C. App. 267, 507 S.E.2d 66 (1998).

This Section and § 20-281 Compared. — Section 20-281 requires those engaged in the business of renting automobiles to the public to maintain liability insurance "insuring the owner and rentee . . . and their agents" against liability for damages for personal injury or death in the minimum amount of $25,000 per person and $50,000 per accident and for property damage in the amount of $10,000.00, while this section, which applies more generally to every policy insuring any automobile owner, whether or not that owner leases vehicles, requires that the coverage be extended to "any other persons in lawful possession" of the vehicle. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Compulsory automobile insurance coverage is provided to a driver if he is in lawful possession of the automobile. Wilson v. State Farm Mut. Auto. Ins. Co., 92 N.C. App. 320, 374 S.E.2d 446 (1988), rev'd on other grounds, 327 N.C. 419, 394 S.E.2d 807, modified on reh'g, 329 N.C. 262, 404 S.E.2d 852 (1991).

At least three classes of persons using an insured automobile must be covered by the omnibus clause: (1) persons named in the insurance policy ("the person named therein"), (2) "original permittees," that is, persons using a vehicle with the express or implied permission of the named insured, and (3) other persons in lawful possession, including "second permittees," that is, third parties using a vehicle with the permission of an "original permittee." Pemberton v. Reliance Ins. Co., 83 N.C. App. 289, 350 S.E.2d 103 (1986).

No Recovery Where Driver Had Neither Permission Nor Lawful Possession. — Subdivision (b)(2) of this section does not permit victims of accidents to recover from the owner of a motor vehicle, or his insurer, where the offending driver of the vehicle had neither permission to drive it nor lawful possession of it. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Liberal Construction in Interpreting Scope of Permission. — The 1967 amendment, adding the words "any other person in lawful possession," signifies that the legislature favors adoption of a liberal rule of construction in applying and interpreting the scope of permission under the omnibus clause. Jernigan v. State Farm Mut. Auto. Ins. Co., 16 N.C. App. 46, 190 S.E.2d 866 (1972); Pemberton v. Reliance Ins. Co., 83 N.C. App. 289, 350 S.E.2d 103 (1986).

The legislature favors adoption of a liberal rule of construction in applying the coverage under the omnibus clause. Packer v. Travelers Ins. Co., 28 N.C. App. 365, 221 S.E.2d 707 (1976).

It was the necessity of proof of permission that the 1967 amendment to subdivision (b)(2) was designed to obviate. Although lawful possession by the operator may be shown by evidence of permission granted to the operator to take the vehicle in the first instance, the plaintiff is not required to show more than lawful possession at the time of the accident. Packer v. Travelers Ins. Co., 28 N.C. App. 365, 221 S.E.2d 707 (1976).

When lawful possession is shown, further proof is not required that the operator had the owner's permission to drive on the very trip and occasion of a collision. Packer v. Travelers Ins. Co., 28 N.C. App. 365, 221 S.E.2d 707 (1976); Caison v. Nationwide Ins. Co., 36 N.C. App. 173, 243 S.E.2d 429 (1978).

The terms "permission" and "lawful possession" are not synonymous, and parties seeking recovery under a theory of permission must meet a higher standard than those seeking recovery under a theory of mere lawful possession. Caison v. Nationwide Ins. Co., 36 N.C. App. 173, 243 S.E.2d 429 (1978), overruling Jernigan v. State Farm Mut. Auto. Ins. Co., 16 N.C. App. 46, 190 S.E.2d 866 (1972).

Permission Not Essential to "Lawful Possession". — The clear intent of the legislature as expressed in the preamble to the 1967 amendment was that permission, express or implied, is not an essential element of lawful possession. Packer v. Travelers Ins. Co., 28 N.C. App. 365, 221 S.E.2d 707 (1976), overruling Jernigan v. State Farm Mut. Auto. Ins. Co., 16 N.C. App. 46, 190 S.E.2d 866 (1972).

The clear intent of the legislature was that permission, express or implied, is not an essential element of lawful possession. Caison v. Nationwide Ins. Co., 36 N.C. App. 173, 243 S.E.2d 429 (1978).

It is not necessary to show that one has the owner's "permission" to drive an automobile in order to show that he is in "lawful possession" of it within the meaning of subdivision (b)(2) of this section. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Permission May Be Expressed or Inferred. — The owner's permission for the use of the insured vehicle may be expressed or, under certain circumstances, it may be inferred. Bailey v. General Ins. Co. of Am., 265 N.C. 675, 144 S.E.2d 898 (1965).

Permission may be either express or implied. Nationwide Mut. Ins. Co. v. Fireman's Fund Ins. Co., 279 N.C. 240, 182 S.E.2d 571 (1971); Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Express Permission. — Where express permission to use the insured vehicle is relied upon it must be on an affirmative character, directly and distinctly stated, clear and outspoken, and not merely implied or left to inference. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962); Bailey v. General Ins. Co. of Am., 265 N.C. 675, 144 S.E.2d 898 (1965).

Implied permission to use the insured vehicle involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962); Bailey v. General Ins. Co. of Am., 265 N.C. 675, 144 S.E.2d 898 (1965).

Implied permission may be a product of the present or past conduct of the insured. It is not confined alone to affirmative action, and is usually shown by usage and practice of the parties over a sufficient period of time prior to the day on which the insured car was being used. Nationwide Mut. Ins. Co. v. Fireman's Fund Ins. Co., 279 N.C. 240, 182 S.E.2d 571 (1971).

Implied permission may be established by a showing of a course of conduct or relationship between parties, including lack of objection to the use by the permittee which signifies acquiescence or consent of the injured. Nationwide Mut. Ins. Co. v. Fireman's Fund Ins. Co., 279 N.C. 240, 182 S.E.2d 571 (1971).

The relationship between the owner and the user, such as kinship, social ties, and the purpose of the use, all have bearing on the critical question of the owner's implied permission for the actual use. Bailey v. General Ins. Co. of Am., 265 N.C. 675, 144 S.E.2d 898 (1965).

A permission to use an automobile may be implied, and strong social relationships and ties between the owner and the bailee are relevant upon the question of the extent of such implied permission. Wilson v. Hartford Accident & Indem. Co., 272 N.C. 183, 158 S.E.2d 1 (1967).

"Permission" is something apart from a general state of mind. Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962).

A general or comprehensive permission is much more readily to be assumed where the use of the insured motor vehicle is for social or nonbusiness purposes than where the relationship of master and servant exists and the usage of the vehicle is for business purposes. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962).

It does not seem reasonable to assume that parties to an insurance contract covering a vehicle used in business contemplate an indiscriminate use for the social and separate business purpose of employees of named insured unless permission, express or implied, is given for such additional uses. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962).

"Permission" Connotes Power to Grant or Withhold It. — Permission to drive a car, within the meaning of the omnibus coverage clause, connotes the power to grant or withhold it. Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708, cert. denied, 282 N.C. 153, 191 S.E.2d 759 (1972).

In order for one's use and operation of an automobile to be within the meaning of the omnibus coverage clause requiring the permission of the named insured, the latter must, as a general rule, own the insured vehicle or have such an interest in it that he is entitled to the possession and control of the vehicle and in a position to give permission. Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708, cert. denied, 282 N.C. 153, 191 S.E.2d 759 (1972).

Who May Grant Permission. — In order to grant permission, as the word "permission" is used in the omnibus clause of a policy, there must be such ownership or control of the automobile as to confer the legal right to give or withhold assent. Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962).

Ordinarily, one permittee within the coverage of a liability policy does not have authority to select another permittee without specific authority from the named insured. Bailey v. General Ins. Co. of Am., 265 N.C. 675, 144 S.E.2d 898 (1965).

Compliance with the requirements of this section necessitates coverage of all who use the insured vehicle with the permission, express or implied, of the named insured. Whether the permission be expressly granted or impliedly conferred, it must originate in the language or the conduct of the named insured or of someone having authority to bind him or it in that respect. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962).

A person, driving only with the permission of a permittee, is not considered as using the automobile with either the express or implied permission of the owner so as to create omnibus clause coverage. Nationwide Mut. Ins. Co. v. Chantos, 25 N.C. App. 482, 214 S.E.2d 438, cert. denied, 287 N.C. 465, 215 S.E.2d 624 (1975).

Where the original permittee gives the defendant express permission, this makes him a person in "lawful possession" under subdivision (b)(2). Nationwide Mut. Ins. Co. v. Chantos, 25 N.C. App. 482, 214 S.E.2d 438, cert. denied, 287 N.C. 465, 215 S.E.2d 624 (1975).

Permission expressly granted by the original permittee is sufficient for purposes of the statute to place the second permittee in lawful possession. Nationwide Mut. Ins. Co. v. Chantos, 25 N.C. App. 482, 214 S.E.2d 438, cert. denied, 287 N.C. 465, 215 S.E.2d 624 (1975); Engle v. State Farm Mut. Auto. Ins. Co., 37 N.C. App. 126, 245 S.E.2d 532, cert. denied, 295 N.C. 645, 248 S.E.2d 250 (1978).

A person is in lawful possession of a vehicle under an omnibus clause if he is given possession of the automobile by the automobile's owner or owner's permittee under a good faith belief that giving possession of the vehicle to the third party would not be in violation of any law or contractual obligation. Belasco v. Nationwide Mut. Ins. Co., 73 N.C. App. 413, 326 S.E.2d 109, cert. denied, 313 N.C. 596, 332 S.E.2d 177 (1985).

A person may be in lawful possession of an automobile if he is given possession by someone using the automobile with the express permission of the owner, even though the permission granted by the owner did not include the authority to permit others to operate the automobile. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Third Party Held in Lawful Possession of Rental Car. — Although lessee violated his contract by permitting third parties to drive rental car, their possession of it was not unlawful. Thus, driver was in "lawful possession" of the car at the time of the accident, although he had neither express nor implied permission from the lessor to drive it, and therefore insurer was required, pursuant to subdivision (b)(2) of this section, and G.S. 20-281, to provide coverage for driver's negligent operation of the automobile, limited to the amounts of coverage required by subsection (g) of this section and G.S. 20-281. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Use Held with Permission. — Evidence was sufficient to show that driver's brother was an "original permittee" of the car's owner, another brother, and that he gave lawful possession of the car to driver within the meaning of subdivision (b)(2) of this section. Pemberton v. Reliance Ins. Co., 83 N.C. App. 289, 350 S.E.2d 103 (1986).

Extending Coverage to Second Permittee. — Regardless of the liberality of the rule of construction applied, permission of the named insured or of the original permittee is essential to extend coverage to a second permittee. Jernigan v. State Farm Mut. Auto. Ins. Co., 16 N.C. App. 46, 190 S.E.2d 866 (1972).

Garage Owner's Policy. — A garage owner's policy complies with the Motor Vehicle Safety and Financial Responsibility Act although it does not provide liability coverage for an occurrence if the operator of the vehicle involved in the occurrence is covered by another policy. United Servs. Auto. Ass'n v. Universal Underwriters Ins. Co., 332 N.C. 333, 420 S.E.2d 155 (1992).

Bailee's Use Must Be Within Scope of Permission. — Under the omnibus clause, the coverage of a policy extends to the liability of a bailee of the automobile for an accident only where the bailee's use of the vehicle at the time of the accident is within the scope of the permission granted to him, the burden being upon the plaintiff to show that such use was within the scope of the permission. Wilson v. Hartford Accident & Indem. Co., 272 N.C. 183, 158 S.E.2d 1 (1967).

When the bailee deviates in a material respect from the grant of permission, his use of the vehicle, while such deviation continues, is not a permitted use within the meaning of the omnibus clause of a policy. Wilson v. Hartford Accident & Indem. Co., 272 N.C. 183, 158 S.E.2d 1 (1967).

Express Limitations Not Overcome by Proof of Friendly Relations. — Proof of friendly relations, which might otherwise imply permission, cannot overcome the effect of a limitation as to time, purpose or locality expressly imposed by the owner upon the bailee at the time of the delivery of the automobile to the bailee by the owner on the occasion in question. Wilson v. Hartford Accident & Indem. Co., 272 N.C. 183, 158 S.E.2d 1 (1967).

Violation of Permission by Carrying Guests in Vehicle. — Where the violation of permission consists merely of carrying guests in the vehicle, and the employee's use of the vehicle is otherwise permitted, the fact alone that the employee permitted riders on the vehicle will not serve to annul the permission of the employer so as to take the employee out of the protection of the omnibus clause. Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962).

Plaintiff Has Burden of Showing Permission. — Plaintiff has the burden of showing that there was permission to use the vehicle.

Hawley v. Indemnity Ins. Co. of N. Am., 257 N.C. 381, 126 S.E.2d 161 (1962).

Use Held Without Permission. — Where a prospective purchaser was permitted to drive a dealer's vehicle seven miles to the purchaser's home to show it to his wife and was to return the vehicle within two and one-half hours, but he actually drove 70 miles to another municipality and had an accident resulting in plaintiff's injury more than 20 hours after he should have returned the vehicle, the court held the purchaser's use at time of accident was without permission of owner. Fehl v. Aetna Cas. & Sur. Co., 260 N.C. 440, 133 S.E.2d 68 (1963).

While an individual's initial use of an automobile was permitted under the terms of a written lease and was subject to the terms thereof, once he defaulted and failed to return the car as demanded by bank-lessor, his continued use was a material deviation from the permission granted in the lease. As such, it was not a permissive use within the meaning of bank's insurance policy or subdivision (b)(2) of this section. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Trial court properly granted summary judgment pursuant to G.S. 1A-1, N.C. R. Civ. P. 56 to defendant in a declaratory judgment action concerning the obligations of insurers in a wrongful death action; a passenger in the vehicle insured by defendant was not in possession of the vehicle pursuant to G.S. 20-279.21(b)(2) when she grabbed the steering wheel from the driver and took control of the car. N.C. Farm Bureau Ins. Co. v. Nationwide Mut. Ins. Co., 168 N.C. App. 585, 608 S.E.2d 112, 2005 N.C. App. LEXIS 340 (2005).

If the named insured has sold the vehicle, its subsequent use by the buyer is by virtue of the latter's ownership and his right to control it and not by virtue of the permission of the named insured seller. Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962).

Where the named insured did not hold legal title to the automobile involved in the collision and dealer plates affixed thereto constituted the sole relationship between the car and the dealership, standing alone this connection was simply too weak to impose mandatory liability coverage on the basis of the owner's policy provisions of subsection (b). McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

Lawful Possession Submitted to Jury. — Plaintiff, once having offered evidence tending to show lawful possession of the truck by a driver, was entitled to have the issue of lawful possession submitted to the jury. Packer v. Travelers Ins. Co., 28 N.C. App. 365, 221 S.E.2d 707 (1976).

Where there was evidence that defendant had driven the car before the accident, and his wife, the insured, did not report the car as stolen or tell the investigating officer that defendant did not have permission to drive the car, this alone was some evidence of implied permission, and created an issue for the jury's resolution. Wilson v. State Farm Mut. Auto. Ins. Co., 92 N.C. App. 320, 374 S.E.2d 446 (1988), rev'd on other grounds, 327 N.C. 419, 394 S.E.2d 807, modified on reh'g, 329 N.C. 262, 404 S.E.2d 852 (1991).

Summary Judgment on Issue of Permission Held Improper. — Where although driver of truck involved in accident did not have owner's permission to drive truck and did not have a valid driver's license, and owner's insurance policy excluded coverage for persons using insured vehicle without reasonable belief that he or she was entitled to do so, insurance company was not entitled to summary judgment on their claim denying coverage, as there was a question as to the driver's subjective belief of being entitled to drive the vehicle. Aetna Cas. & Sur. Co. v. Nationwide Mut. Ins. Co., 95 N.C. App. 178, 381 S.E.2d 874 (1989), aff'd, 326 N.C. 771, 392 S.E.2d 377 (1990).

A passenger who grabs the steering wheel is actually interfering with the vehicle's operation, and is not ""in possession" pursuant to G.S. 20-279.21(b)(2). N.C. Farm Bureau Ins. Co. v. Nationwide Mut. Ins. Co., 168 N.C. App. 585, 608 S.E.2d 112, 2005 N.C. App. LEXIS 340 (2005).

Person knowingly operating motor vehicle without driver's license may nevertheless have reasonable belief that he was entitled to operate vehicle on given date and time. Aetna Cas. & Sur. Co. v. Nationwide Mut. Ins. Co., 326 N.C. 771, 392 S.E.2d 377 (1990).

III. UNINSURED MOTORIST COVERAGE.

Purpose of Uninsured Motorist Provisions. — Subdivision (3) of subsection (b) of this section was enacted so as to include protection against uninsured motorists. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967); Wright v. Fidelity & Cas. Co., 270 N.C. 577, 155 S.E.2d 100 (1967); Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

The purpose of the uninsured motorist statute was to provide, within fixed limits, some financial recompense to innocent persons who receive bodily injury or property damage, and to the dependents of those who lose their lives through the wrongful conduct of an uninsured motorist who cannot be made to respond in damages. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967); Lichtenberger

v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

Uninsured motorist coverage is intended, within fixed limits, to provide financial recompense to innocent persons who receive injuries and the dependents of those who are killed, through the wrongful conduct of motorists who, because they are uninsured and not financially responsible, cannot be made to respond in damages. Wright v. Fidelity & Cas. Co., 270 N.C. 577, 155 S.E.2d 100 (1967).

Uninsured motorist coverage is designed to close the gaps inherent in motor vehicle financial responsibility and compulsory insurance legislation. Wright v. Fidelity & Cas. Co., 270 N.C. 577, 155 S.E.2d 100 (1967).

The uninsured motorist statute was enacted by the General Assembly as a result of public concern over the increasingly important problem arising from property damage, personal injury, and death inflicted by motorists who are uninsured and financially irresponsible. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967); Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

The uninsured motorist provision of this section was enacted in order to close "gaps" in the motor vehicle financial responsibility legislation and thus, to provide financial recompense to innocent persons who receive injuries through the wrongful conduct of motorists who are uninsured and financially irresponsible. Autry v. Aetna Life & Cas. Ins. Co., 35 N.C. App. 628, 242 S.E.2d 172, cert. denied, 295 N.C. 89, 244 S.E.2d 257 (1978).

Subdivision (3) of subsection (b) of this section provides for a limited type of compulsory automobile liability coverage against uninsured motorists. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

The nature of the uninsured motorist statute is remedial and therefore should be liberally construed to accomplish the beneficial purpose intended by the General Assembly. Williams v. Holsclaw, 128 N.C. App. 205, 495 S.E.2d 166 (1998).

The legislative policy behind uninsured motorist insurance laws is not to divide liability among insurers or limit insurers' liability, but to protect the motorist to the extent the statute requires protection against a specific class of tortfeasors. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

There is nothing in the legislative scheme suggesting that insured persons should have to concern themselves with the liability insurance limits of tortfeasors; in fact, the very purpose of uninsured motorist coverage is to ameliorate that concern. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Construction of Uninsured Motorist Coverage Provisions. — G.S. 20-279.21(b)(3)(b), is remedial in nature and is to be liberally construed so that the beneficial purpose intended by its enactment may be accomplished; the purpose of the uninsured motorist provisions is best served when every provision is interpreted to provide the innocent victim with the fullest possible protection. Hoffman v. Great Am. Alliance Ins. Co., 166 N.C. App. 422, 601 S.E.2d 908, 2004 N.C. App. LEXIS 1727 (2004).

The statutory phrase "collision between motor vehicles" does not require that the collision be with the unidentified vehicle; the clear indication is that the legislature intended to make the provisions available to all insureds who are injured in motor vehicular collisions caused by unidentified motorists. Petteway v. South Carolina Ins. Co., 93 N.C. App. 776, 379 S.E.2d 80, cert. denied, 325 N.C. 273, 384 S.E.2d 518 (1989).

Subdivision (b)(3)b of this section requires physical contact between the vehicle operated by the insured motorist and the vehicle operated by the hit-and-run driver for the uninsured motorist provisions of the statute to apply. McNeil v. Hartford Accident & Indem. Co., 84 N.C. App. 438, 352 S.E.2d 915 (1987).

If plaintiff can show at trial that a collision occurred between the hit-and-run vehicle and another vehicle and that this collision propelled that vehicle into a third vehicle, and that this second collision propelled the third vehicle into plaintiff's vehicle, then under these circumstances, the physical contact requirement has been satisfied, albeit intermediately and indirectly. McNeil v. Hartford Accident & Indem. Co., 84 N.C. App. 438, 352 S.E.2d 915 (1987).

Where plaintiff was seriously injured when an automobile he was driving overturned after being forced off the highway by an unidentified motorist and where the incident was witnessed by another motorist, plaintiff's claim to the benefit of defendants' uninsured motorist coverages was not legally enforceable under this section; the record showed without contradiction that plaintiff's injuries did not result from a collision between motor vehicles. Petteway v. South Carolina Ins. Co., 93 N.C. App. 776, 379 S.E.2d 80, cert. denied, 325 N.C. 273, 384 S.E.2d 518 (1989).

Insured's breach of contract and related claims against his automobile insurer were properly dismissed under G.S. 20-278.21(b)(3)(b) when his complaint alleged that he had struck a pine tree log which had fallen off of a truck and was lying in the middle on the interstate, but no evidence showed from what vehicle, if any, the pine tree log fell from, when it fell, or how long it had been lying on the interstate prior to impact, and thus, the complaint did not satisfy the physical contact requirement. Moore v. Nationwide Mut. Ins. Co., 191 N.C. App. 106, 664 S.E.2d 326, 2008 N.C. App. LEXIS 1171 (2008).

Vehicles owned by political subdivisions are expressly excepted from the statutory exception. Williams v. Holsclaw, 128 N.C. App. 205, 495 S.E.2d 166 (1998).

Plaintiffs, who were injured in a traffic accident with a police officer, were not barred from recovering UM benefits from insurer due to the immunity granted to police officer. Williams v. Holsclaw, 128 N.C. App. 205, 495 S.E.2d 166 (1998).

Coverage for Person Walking Down the Street. — As a person insured of the first class, plaintiff was entitled to UM benefits under the policy regardless of whether she was riding in the insured vehicle or walking down the street. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), cert. improvidently granted in part, aff'd in part and rev'd in part on other grounds, 341 N.C. 678, 462 S.E.2d 650 (1995).

Effect of Increase in Coverage Under 1979 Amendment. — Motorists with existing policies including uninsured motorist coverage at the level specified in G.S. 20-279.5(c) prior to its 1979 amendment could not claim up to the new limits if they were struck by an uninsured motorist; if those insureds, before their routinely scheduled policy renewal, desired more uninsured motorist coverage at the higher level, they could renew their policies early. In the interim, they would not be in violation of the Motor Vehicle Safety and Financial Responsibility Act because they retained their existing, lower-limit policies, nor would their insurers be forced to assume additional, uncontracted for liability. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Motorists who contracted and paid premiums for uninsured motorist coverage after the effective date of the new limits provided in G.S. 20-279.5(c) following its 1979 amendment should receive coverage up to those higher limits. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

The term "uninsured motor vehicle" in subdivision (b)(3) of this section is intended to include motor vehicles which should be insured under this Article but are not, and motor vehicles which, though not subject to compulsory insurance under this Article, are at some time operated on the public highways. Autry v. Aetna Life & Cas. Ins. Co., 35 N.C. App. 628, 242 S.E.2d 172, cert. denied, 295 N.C. 89, 244 S.E.2d 257 (1978).

Vehicle "Uninsured" Unless Policy Covers Liability of Person Using It. — An automobile on which an automobile liability insurance policy has been issued is uninsured within the meaning of an uninsured motorists endorsement, unless such policy covers the liability of the person using it and inflicting injury on the occasion of the collision or mishap. Buck v. United States Fid. & Guar. Co., 265 N.C. 285, 144 S.E.2d 34 (1965).

No Coverage of Injury on Private Property by Vehicle Not Subject to Financial Responsibility Law. — The uninsured motorist provision was not intended to provide financial recompense to one injured on private property by a vehicle not subject to the registration and compulsory insurance provisions of the motor vehicle financial responsibility legislation. Autry v. Aetna Life & Cas. Ins. Co., 35 N.C. App. 628, 242 S.E.2d 172, cert. denied, 295 N.C. 89, 244 S.E.2d 257 (1978).

"Legally entitled to recover" should be construed to mean that insurer's Underinsured Motorist (UIM) liability derives from the tortfeasor's liability. Silvers v. Horace Mann Ins. Co., 324 N.C. 289, 378 S.E.2d 21 (1989).

And the UIM Carrier Can Recover from the Tortfeasor. — An uninsured motorist coverage carrier may bind a tortfeasor for the amount the uninsured carrier paid the victim pursuant to an arbitration proceeding. Burger v. Doe, 143 N.C. App. 328, 546 S.E.2d 141, 2001 N.C. App. LEXIS 265 (2001), cert. denied, 354 N.C. 67, 553 S.E.2d 36 (2001).

Policy to Include Certain Provisions. — A close reading of subdivisions (b)(3)a and (b)(3)b indicates that they provide for the inclusion of certain provisions in the policy, namely, that the insurer shall be bound by a final judgment against the uninsured motorist, under certain conditions, and that suit may be against the insurer directly in case of injury from collision with an unidentifiable motorist. Hendricks v. United States Fid. & Guar. Co., 5 N.C. App. 181, 167 S.E.2d 876 (1969).

Construction of Uninsured Motorists Coverage. — In determining whether the injury arose out of the "ownership, maintenance, or use" of the motor vehicle, the same rules of construction apply in construing uninsured motorists coverage as apply in construing a standard liability insurance policy. Williams v. Nationwide Mut. Ins. Co., 269 N.C. 235, 152 S.E.2d 102 (1967).

The term "uninsured vehicle," when used in an uninsured motorist's endorsement, must be interpreted in the light of the fact that such endorsement is designed to protect the insured, and any operator of the insured's car with the insured's consent, against injury caused by the negligence of uninsured or unknown motorists. Buck v. United States Fid. & Guar. Co., 265 N.C. 285, 144 S.E.2d 34 (1965).

Subdivision (b)(3) of this section is to be considered in conjunction with the principle that the provisions of this section enter into and form a part of the policy. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

Employees injured in an accident caused by an uninsured motorist (UM) did not qualify as "persons insured" who were required to be offered UM coverage by the insurer under G.S. 20-279.21(b)(3) because their employer was the named insured under the commercial automobile policy and they were not using an insured vehicle at the time of the collision. Reel v. Selective Ins. Co., 407 F. Supp. 2d 737, 2005 U.S. Dist. LEXIS 38289 (E.D.N.C. 2005).

In the absence of rejection, this section writes uninsured motorists coverage into every policy of automobile liability insurance although the policy may not indicate the coverage on its face. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

And Coverage Is Provided Although Not Requested by Insured. — A policy issued under subdivision (b)(3) of this section is substantially different from a "voluntary" policy. Where the provisions of the statute enter into and form a part of the policy, the coverage is provided although the insured has never requested that coverage. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

But Coverage Does Not Apply If Named Insured Rejects It. — Compulsory uninsured motorist coverage as required by subdivision (b)(3) of this section does not apply where the insured named in the policy rejects the coverage. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

Amendment of Policy Does Not Affect Rejection. — Where the husband refused uninsured motorist coverage and then added his wife to the insurance policy as a named insured party, this amendment did not require another offer of uninsured motorist coverage under G.S. 20-279.21(b)(3), because a new policy was not being issued. Weaver v. O'Neal, 151 N.C. App. 556, 566 S.E.2d 146, 2002 N.C. App. LEXIS 769 (2002).

Burden of Proving Rejection of Coverage. — The delivery or issuance of a motor vehicle liability policy carries with it as a matter of law the requisite uninsured motorist liability, unless it is shown that the statutory coverage is rendered inapplicable by a rejection. As is true with cancellation or termination, the burden of proving the defense of rejection shifts to the defendant. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

Acceptance of Policy without Uninsured Motorist Provisions Does Not Operate as Rejection. — If the insurer cannot avoid liability on a policy of insurance issued pursuant to this statute by omitting from the policy provisions favorable to the insured, then neither can the insured's acceptance of the policy alone operate as a rejection of the coverage written into it by statute. Lichtenberger v. American Motorists Ins. Co., 7 N.C. App. 269, 172 S.E.2d 284 (1970).

Coverage Not Restricted to Injury or Damage Occurring in This State. — It appears from subdivision (3) of subsection (b) of this section that the General Assembly clearly intended that automobile liability insurance policies delivered or issued for delivery in this State and covering motor vehicles registered or principally garaged in this State will provide protection, within certain limits, to insureds who are legally entitled to recover damages for bodily injury from owners or operators of uninsured motor vehicles. The section does not restrict the coverage to injury or damage occurring in this State. Dildy v. Southeastern Fire Ins. Co., 13 N.C. App. 66, 185 S.E.2d 272 (1971).

Vehicle Insured in Another State. — In an action on the uninsured motorist clause in a collision policy, evidence that the vehicle causing the loss was injured in another state, where it was registered and licensed, by a company authorized to do business in that state but not in North Carolina, was insufficient to carry the burden of proving the allegation that the vehicle was an uninsured automobile. Rice v. Aetna Cas. & Sur. Co., 267 N.C. 421, 148 S.E.2d 223 (1966).

Insolvency of Insurer of Vehicle Causing Loss. — Prior to the first 1965 amendment, which added the present third paragraph of subdivision (b)(3), in an action on the uninsured vehicle clause in a collision policy, evidence that the vehicle causing the loss was insured in another state, where it was registered and licensed, and that subsequent to the collision the insurer was placed in receivership because of its insolvency, and that a claim was filed with the insurer's receiver, was insufficient to carry the burden of proving that the vehicle causing the injury was an uninsured motor vehicle. Rice v. Aetna Cas. & Sur. Co., 267 N.C. 421, 148 S.E.2d 223 (1966).

Under an insurance policy providing that a vehicle is uninsured if the liability insurer "is or becomes insolvent" without specifying any period of time, an uninsured motorist claim may not be barred even though the minimum period specified in subsection (b)(3)(b) has elapsed. North Carolina Ins. Guar. Ass'n v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364 (1994).

While the General Assembly has prescribed the minimum time period within which insolvency protection must be provided, it also has expressly permitted an insurer to include, within a policy, coverage which extends beyond the mandated minimum term. North Carolina

Ins. Guar. Ass'n v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364 (1994).

Trial court properly granted summary judgment to an administratrix on her claims against two uninsured motorist insurers because, on the date of the insolvency of the third insurer with whom the administratrix settled following the work related death of her husband, the two uninsured motorist insurers became liable to the administratrix for the unfunded amount of the settlement with the insolvent insurer. Jones v. N.C. Ins. Guaranty Ass'n, 163 N.C. App. 105, 592 S.E.2d 600, 2004 N.C. App. LEXIS 302 (2004), cert. denied, 358 N.C. 544, 598 S.E.2d 382 (2004), cert. denied, — N.C. —, 598 S.E.2d 381 (2004).

What Must Be Shown Under Uninsured Motorist Endorsement. — The insured, in order to be entitled to the benefits of the uninsured motorist endorsement, must show (1) he is legally entitled to recover damages, (2) from the owner or operator of an uninsured automobile, (3) because of bodily injury, (4) caused by accident, and (5) arising out of the ownership, maintenance, or use of the uninsured automobile. Williams v. Nationwide Mut. Ins. Co., 269 N.C. 235, 152 S.E.2d 102 (1967).

Action under Uninsured Motorist Policy Is One for Tort. — Despite the contractual relation between plaintiff insured and defendant insurer, an action under an uninsured vehicle policy is actually one for the tort allegedly committed by the uninsured motorist. Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974).

The three-year tort statute of limitations, which begins running on the date of an accident, also applies to the uninsured motorist carrier. Thomas v. Washington, 136 N.C. App. 750, 525 S.E.2d 839, 2000 N.C. App. LEXIS 154 (2000).

Two-Year Statute of Limitations Applies. — In an action for wrongful death under an uninsured motor vehicle policy the court held that plaintiff should not have three years to sue the insurance company under G.S. 1-52, the statute of limitations on actions on contracts when he had only two years in which to sue the individual primarily liable, by reason of G.S. 1-53, the statute of limitations applicable to tort claims. Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974).

Where the estate administrator filed a wrongful death action against the uninsured driver and later served the uninsured motorist insurer in the same action, the applicable statute of limitations was the two-year wrongful death statute of limitations under G.S. 1-53(4) and not the three-year contract statute of limitations under G.S. 1-52(1); this finding was consistent with the requirement under G.S. 20-279.21(b)(3)(a) that the uninsured motorist insurer be made a party to the underlying tort action. Sturdivant v. Andrews, 161 N.C. App. 177, 587 S.E.2d 510, 2003 N.C. App. LEXIS 2003 (2003), cert. denied, cert. dismissed, 358 N.C. 242, 594 S.E.2d 34 (2004).

Trial court properly granted uninsured motorist insurer summary judgment in an executrix's wrongful death action where the two-year statutes of limitations applied to the case and the executrix failed to filed the complaint against the defendants within that time period. Eckard v. Smith, 166 N.C. App. 312, 603 S.E.2d 134, 2004 N.C. App. LEXIS 1778 (2004), cert. denied, 359 N.C. 321, 611 S.E.2d 410 (2005), aff'd, — N.C. —, 619 S.E.2d 503 (2005).

Right to Recover Is Derivative and Conditional. — Plaintiff's right to recover against his intestate's insurer under the uninsured motorist endorsement is derivative and conditional. Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974).

Unless a plaintiff is "legally entitled to recover damages" for the wrongful death of his intestate from the uninsured motorist, the contract upon which he sues precludes him from recovering against the insurance company. Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974); Brace v. Strother, 90 N.C. App. 357, 368 S.E.2d 447, cert. denied, 323 N.C. 171, 373 S.E.2d 104 (1988), modified on other grounds, 329 N.C. 262, 404 S.E.2d 852 (1991).

Carrier May Not Seek Contribution and/or Indemnification. — An uninsured motorist carrier, in defending an uninsured motorist pursuant to subdivision (b)(3)(a), may not file a third party complaint seeking contribution and/or indemnification. Hunter v. Kennedy, 128 N.C. App. 84, 493 S.E.2d 327 (1997).

Plain language of G.S. 20-279.21(b)(3)(b) requires an insured, or someone on his behalf, to report an accident within 24 hours or as soon thereafter as may be practicable, to a police officer, and this statutory language is unequivocable. Hoffman v. Great Am. Alliance Ins. Co., 166 N.C. App. 422, 601 S.E.2d 908, 2004 N.C. App. LEXIS 1727 (2004).

Good faith inquiry is a subjective inquiry that examines a plaintiff's actual knowledge at the time of an accident. Hoffman v. Great Am. Alliance Ins. Co., 166 N.C. App. 422, 601 S.E.2d 908, 2004 N.C. App. LEXIS 1727 (2004).

Trier of fact determines whether good faith was exercised by an insured in providing notice as soon as practicable. Hoffman v. Great Am. Alliance Ins. Co., 166 N.C. App. 422, 601 S.E.2d 908, 2004 N.C. App. LEXIS 1727 (2004).

Notice Requirement. — Insured's failure to give prompt notice of an alleged hit and run accident, in which he was struck by a car while riding his bicycle and incurred personal injuries, barred his claim against the insurers from uninsured motorist vehicle coverage; the insured was aware that he was injured later during the day of the alleged accident, but failed to make even a police report regarding the incident. Hoffman v. Great Am. Alliance Ins. Co., 166 N.C. App. 422, 601 S.E.2d 908, 2004 N.C. App. LEXIS 1727 (2004).

Three-part test applies to determine whether an insured's delay in giving prompt notice to an insurer was as soon as practicable; when faced with a claim that notice was not timely given, (1) the trier of fact must first decide whether the notice was given as soon as practicable and, (2) if not, whether the insured has shown that he acted in good faith, and (3) then the burden shifts to the insurer to show that its ability to investigate and defend was materially prejudiced by the delay. Hoffman v. Great Am. Alliance Ins. Co., 166 N.C. App. 422, 601 S.E.2d 908, 2004 N.C. App. LEXIS 1727 (2004).

Any defense available to the uninsured tort-feasor should be available to the insurer. Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974); Brace v. Strother, 90 N.C. App. 357, 368 S.E.2d 447 (1988).

Extent of Insurer's Liability Limited to Amount of Damages Recoverable in Court of Law. — When defendant to an action under an uninsured vehicle policy undertook "to pay all sums which the insured or his legal representatives shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury, sickness or disease, including death resulting therefrom ..." it assumed liability only for damages for which plaintiff could recover judgment in a court of law in an action against the uninsured motorist. Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974).

Limitation of Liability and Exclusionary Provisions Deemed Valid. — Limitation of liability and exclusionary provisions in policies which reduced the amount of uninsured motorist coverage by the amount paid to the insured as workers' compensation benefits did not conflict with the Financial Responsibility Act and were enforceable, Liberty Mut. Ins. Co. v. Ditillo, 125 N.C. App. 701, 482 S.E.2d 743 (1997), rev'd in part, 348 N.C. 247, 499 S.E.2d 764 (1998).

Subrogation Lien. — The workers' compensation carrier for plaintiffs had a subrogation lien on the uninsured motorist policy proceeds paid to plaintiff employee who was injured in an automobile accident occurring while within the scope of employment. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993), overruled on other grounds, McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

Subdivision (b)(3) of this section is designed to protect the insured as to his actual loss within the statutory limit for one person, but it was not intended by the General Assembly that an insured shall receive more from such coverage than his actual loss, although he is the beneficiary under multiple policies issued pursuant to the statute. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

"Other Insurance" Clauses Contrary to Statutory Amount of Coverage Not Permitted. — Subdivision (3) of subsection (b) of this section does not permit "other insurance" clauses in the policy which are contrary to the statutory limited amount of coverage. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

"Other Insurance" Clauses Unenforceable Where Insured's Actual Damages Exceed Statutory Minimum. — "Other insurance" clauses in policies providing uninsured motorist coverage may not be enforced if such enforcement results in limiting an insured to recovery of an amount equal only to the coverage compelled by the act, when the actual damages suffered by the insured are greater than that amount. Turner v. Masias, 36 N.C. App. 213, 243 S.E.2d 401 (1978).

But Where Actual Damages Are Less, Such Clauses Are Valid. — While an "other insurance" clause in uninsured motorist coverage would be invalid to prevent the insured from being made whole, the use of such clauses to establish the rights of insurers in cases in which the damages were less than the coverage required by the act is not offensive to either the terms or intent of the act. The fact that two policies of insurance of different types are combined to provide the uninsured motorist coverage required by the act does not contravene its terms and, in fact, is specifically provided for in subsection (j). Turner v. Masias, 36 N.C. App. 213, 243 S.E.2d 401 (1978).

Neither the language of the act nor the public policy served by it is concerned with which insurance company makes the insured whole, so long as the "other insurance" clause is not used to defeat recovery of actual damages by an insured who has not rejected uninsured motorist coverage. Turner v. Masias, 36 N.C. App. 213, 243 S.E.2d 401 (1978).

Provision That Uninsured Motorist Clause Shall Constitute Only Excess Coverage Violates Statute. — A policy provision that its uninsured motorist clause should constitute only excess insurance over any other similar insurance available to the injured person, is contrary to the statutory provisions of subdivision (3) of subsection (b) of this section. Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

Insured Is Not Limited to One Recovery

Where He Is Beneficiary of more Than One Policy. — This section does not limit an insured to only one recovery under uninsured motorist coverage where his loss for bodily injury or death is greater than the statutory limit and he is the beneficiary of more than one policy issued under subdivision (3) of subsection (b). Moore v. Hartford Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967); Turner v. Masias, 36 N.C. App. 213, 243 S.E.2d 401 (1978); Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

"Stacking" or aggregating coverages under the compulsory uninsured motorist's coverage requirement may occur where coverage is provided by two or more policies, each providing the mandatory minimum coverage. However, to the extent that the coverage provided by motor vehicle liability insurance policies exceeds the mandatory minimum coverage required by the statute, the additional coverage is voluntary, and is governed by the terms of the insurance contract. GEICO v. Herndon, 79 N.C. App. 365, 339 S.E.2d 472 (1986).

Trial court properly determined that G.S. 20-279.21(b)(3) prohibited an insured who was a co-owner of a vehicle with the insured's employer from stacking the full amount of uninsured motorist (UM) coverage provided under an insurance policy the insured purchased with the full amount of UM coverage provided by a second policy the insured's employer purchased; appellate court upheld the trial court's judgment awarding the insured the maximum amount of UM coverage provided under the policy that the insured's employer purchased, and apportioning that amount between the insured and the employer's insurance companies. Hoover v. State Farm Mut. Ins. Co., 156 N.C. App. 418, 576 S.E.2d 396, 2003 N.C. App. LEXIS 116 (2003).

Stacking Not Required. — This section does not require that the uninsured motorist coverage limits on each vehicle insured in the policy be aggregated or "stacked;" nor did the nature of the policy itself and the language it employed require such stacking. Lanning ex rel. Estate of Lanning v. Allstate Ins. Co., 332 N.C. 309, 420 S.E.2d 180 (1992).

The language in insurance company's policy was unambiguous and straightforward and it did not permit the intrapolicy stacking of its uninsured motorist (UM) coverage; therefore, the UM policy coverages on the three separate vehicles covered by plaintiffs' auto liability insurance policy with defendant insurance company would not be stacked intrapolicy to satisfy husband and wife's damages. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993), overruled on other grounds, McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

Because an insured had more than one policy with coverage, and the plain language of the policies clearly limited the total uninsured motorist coverage to the highest applicable limit of liability under any one policy, the insurer was entitled to a setoff for the amount already received by the insured, the insured was not entitled to stack the UM coverage limits under the policies pursuant to G.S. 20-279.21(b)(3), and summary judgment was properly granted to the insurer. Trivette v. State Farm Mut. Auto. Ins. Co., 164 N.C. App. 680, 596 S.E.2d 448, 2004 N.C. App. LEXIS 976 (2004), cert. denied, 359 N.C. 75, 605 S.E.2d 149 (2004).

Claimants were not entitled to stack Uninsured Motorist (UM) coverage limits under an insurance policy since this section does not mandate UM stacking and the language of the policy under which claimants were only entitled to UM coverage in the amount of $50,000 per person with a limit of $100,000 per accident, these amounts representing the amount of coverage on the vehicle involved in the accident, did not allow stacking. Dungee v. Nationwide Mut. Ins. Co., 108 N.C. App. 599, 424 S.E.2d 234 (1993).

Institution of Action Against Hit-and-Run Driver May Not Be Made Condition Precedent to Recovery Under Policy. — In many cases it is impossible to determine the identity of a hit-and-run driver. To hold that the institution of an action by the insured against a hit-and-run driver, and to recover damages from him for his tort, is a condition precedent to the insurer's liability under uninsured motorist coverage, would in most such cases defeat insurer's liability against uninsured motorist coverage. Wright v. Fidelity & Cas. Co., 270 N.C. 577, 155 S.E.2d 100 (1967).

Provision Requiring Joinder as Party Defendant of Person Allegedly Responsible for Damage to Insured Held Void. — The provision of an automobile liability policy which required the insured, in an action against the insurer, to join as a party defendant the person or organization allegedly responsible for the damage to the insured, was held void as a violation of G.S. 58-31 (now G.S. 58-3-35) where the party defendant was a nonresident uninsured motorist and not amendable to the jurisdiction of this State. Dildy v. Southeastern Fire Ins. Co., 13 N.C. App. 66, 185 S.E.2d 272 (1971).

Service of Process on Uninsured Motorist Carrier. — Although this section does not expressly require that separate process be issued for an uninsured motorist carrier, it does specifically require that a "copy" of the summons and complaint be served on the insurer, and the appellate courts have required strict compliance with the statutes which provide for service of process on insurance companies. Thomas v. Washington, 136 N.C. App. 750, 525 S.E.2d 839, 2000 N.C. App. LEXIS 154 (2000).

Default Judgment Against Uninsured Motorist Prohibited. — The purpose of that portion of this section prohibiting entry of default judgments is to provide the insurer, who has filed a timely answer, an opportunity to defend the complaint without being prejudiced by the conduct of the uninsured motorist who may, and usually does, have absolutely no interest in the law suit; otherwise, the insurer's liability being derivative, the entry of a default or default judgment, against the uninsured motorist also establishes the liability of the insurer. Abrams v. Surrette, 119 N.C. App. 239, 457 S.E.2d 770 (1995).

Failure to Obtain Judgment Against Defendants Precluded Declaratory Judgment Against Insurers. — Under the uninsured motorist coverages of defendant insurers, liability did not attach until a valid judgment was obtained against the uninsured motorist; therefore, where plaintiffs had not obtained any such judgment and there was no assurance that they ever would, there was no case in controversy to meet the jurisdictional requirements for declaratory judgment under G.S. 1-253. McLaughlin v. Martin, 92 N.C. App. 368, 374 S.E.2d 455 (1988).

No Conflict Between Statute and Policy Requirement. — There is no conflict between the term "hit-and-run motor vehicle," as used in the statute relating to uninsured or hit-and-run motor vehicle coverage, and a policy requirement of "physical contact of such automobile" with the insured or with an automobile occupied by the insured. Hendricks v. United States Fid. & Guar. Co., 5 N.C. App. 181, 167 S.E.2d 876 (1969).

The authority of the court to tax costs in an action to recover under uninsured motorist provisions of an insurance policy is not dependent on either the insurance policy or subdivision (b)(3) of this section. Ensley v. Nationwide Mut. Ins. Co., 80 N.C. App. 512, 342 S.E.2d 567, cert. denied, 318 N.C. 414, 349 S.E.2d 594 (1986).

Uninsured motorist provision of insurance policy held to provide coverage for parent's claim for minor child's medical expenses; child's distinct claims and coverage, raised under his separate contract of insurance, were irrelevant. Nationwide Mut. Ins. Co. v. Lankford, 118 N.C. App. 368, 455 S.E.2d 484 (1995).

Subdivision (b)(3)b of this section does not require that insurer be a named party; therefore, failure by petitioner to name insurer as a party was not fatal. Since a major purpose of accurately identifying defendant is to provide notice, and insurer had actual notice of action, respondent insurer's argument that there is no statutory scheme for default judgment against fictitious person was without merit. Sparks v. Nationwide Mut. Ins. Co., 99 N.C. App. 148, 392 S.E.2d 415 (1990).

Use of Vehicle. — Where plaintiff policeman was directing traffic at the time of accident, as the plaintiff was using his vehicle to assist him in the performance of his duties as a police officer, the vehicle was being put to service for a purpose intended by city; therefore, the plaintiff was among those persons insured under the statute and was entitled to uninsured motorist coverage. Maring v. Hartford Cas. Ins. Co., 126 N.C. App. 201, 484 S.E.2d 417 (1997).

Setoff For Payments Under Medical Payments Coverage. — In an arbitration concerning uninsured motorist coverage, an insurer was entitled to a setoff for amounts paid under medical payments coverage, as the setoff did not violate G.S. 20-279.21; the statute did not contain any language controlling the issue presented in the instant case as to duplication of compensation under uninsured motorist coverage and medical payments coverage, and did not violate the collateral source rule. Espino v. Allstate Indem. Co., 159 N.C. App. 686, 583 S.E.2d 376, 2003 N.C. App. LEXIS 1526 (2003).

Reduction by Amount of Workers Compensation Permitted. — Where plaintiff was covered by both a workers' compensation policy paid for by his employer and by UM policies not paid for by his employer, under subsection (e) the limit of liability provision in defendant's policies at issue in the action was authorized and defendant UM carriers were entitled to reduce coverage to plaintiff by the amount of workers compensation already received. McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

The court upheld UIM provisions which excluded relatives who did not reside in the same household as the named insured and who were occupying a vehicle other than the one covered by the policy when they were injured. North Carolina Farm Bureau Mut. Ins. Co. v. Perkinson, 140 N.C. App. 140, 535 S.E.2d 405, 2000 N.C. App. LEXIS 1095 (2000).

Statute of Limitations Defense. — Although an insurer's liability under an uninsured motorist liability policy is derivative of the uninsured motorist's liability, the insurer is not precluded from asserting the statute of limitations as a defense, where the plaintiff has not timely commenced an action against the insurer, even though the defense might not be available to the tortfeasor. Reese v. Barbee, 129 N.C. App. 823, 501 S.E.2d 698 (1998), aff'd, 350 N.C. 60, 510 S.E.2d 374 (1999).

Insurer Bound by Judgment of Florida Court. — Insurer who was served by registered or certified mail, return receipt requested, or another manner provided by law, with a copy of the summons, complaint, or other process in an underlying Florida action against an uninsured motorist, was, under G.S. 20-279.51(b)(3), bound by the final judgment the injured party took against the uninsured motorist. Sawyers v. Farm Bureau Ins. Co. of N.C., Inc., 170 N.C. App. 17, 612 S.E.2d 184, 2005 N.C. App. LEXIS 893 (2005).

Illustrative Case. — Where the liability limits of business automobile policy were $300,000 and there was no written rejection of uninsured motorist (UM) coverage by the plaintiff, they were entitled to $300,000 of UM coverage, an amount equal to the liability limits of the policy. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 341 N.C. 678, 462 S.E.2d 650 (1995).

Insured was not precluded as a matter of law from recovering under the uninsured motorist policy because it was possible that a reasonable interpretation of the uninsured motorist policy at issue was that a rock, which flew off a dump truck carting a load of rocks (which was unquestionably an expected use of the truck) and hit a vehicle, was a sufficiently direct collision between the truck and the vehicle. Geico Ins. Co. v. Larson, 542 F. Supp. 2d 441, 2008 U.S. Dist. LEXIS 12643 (E.D.N.C. 2008).

IV. UNDERINSURED MOTORIST COVERAGE.

Legislative Intent. — The amendments to this section do not indicate the General Assembly intended to change the focus of underinsured motorist (UIM) coverage from persons to vehicles; the anti-intrapolicy stacking provisions in the 1991 amendments simply prevent an insured from receiving multiple UIM recoveries under a single policy. They do not prevent an insured from being covered while operating an owned vehicle not listed in the policy. Honeycutt v. Walker, 119 N.C. App. 220, 458 S.E.2d 23 (1995).

Although the better practice would be for the insured to notify the UIM carrier when the insured has received an acceptable offer from the liability carrier, there is nothing in the statute which requires written notice to the UIM insurer be made directly by the insured. Daughtry v. Castleberry, 123 N.C. App. 671, 474 S.E.2d 137 (1996), cert. granted, 345 N.C. 341, 483 S.E.2d 165 (1997), aff'd, 346 N.C. 272, 485 S.E.2d 45 (1997).

There is no requirement that all those covered under a policy be insured at identical levels of coverage; thus, as long as the minimum coverage requirements are met, no reason exists to prevent an insured from obtaining multi-tiered coverage for its employees. Hlasnick v. Federated Mut. Ins. Co., 136 N.C. App. 320, 524 S.E.2d 386, 2000 N.C. App. LEXIS 18 (2000), aff'd, in part, and cert. dismissed, in part, 353 N.C. 240, 539 S.E.2d 274 (2000).

Subsection (b)(4) does not require that an underinsured motorist carrier be notified of a claim within the statute of limitations governing the tortfeasor, although an insured would be barred from seeking coverage if she failed to bring an action against a tortfeasor within the statute of limitations governing tort actions. Liberty Mut. Ins. Co. v. Pennington, 141 N.C. App. 495, 541 S.E.2d 503, 2000 N.C. App. LEXIS 1441 (2000), aff'd, 356 N.C. 571, 573 S.E.2d 118 (2002).

In injured party's negligence claim against the driver, in which the injured party sought to recover underinsured motorist coverage from her insurer, the insurer was not entitled to formal service of process under G.S. 20-279.21(b)(4). Darroch v. Lea, 150 N.C. App. 156, 563 S.E.2d 219, 2002 N.C. App. LEXIS 390 (2002).

Injured insureds, who learned that the insurance coverage for the tortfeasor who injured them was insufficient to cover their damages, were not required to give their underinsured motorist insurer notice of a possible underinsured motorist claim within the statute of limitations applicable to the underlying tort, in G.S. 1-52(16), because the plain language of G.S.20-279.21(b)(4), requiring notice of such a claim to the insurer, did not impose this requirement. Liberty Mut. Ins. Co. v. Pennington, 356 N.C. 571, 573 S.E.2d 118, 2002 N.C. LEXIS 1252 (2002).

Per Claimant or Per Accident Coverage. — This section does not mandate that underinsured coverage limits be provided per claimant, as opposed to per accident, and thus, a per accident limit in a business liability policy is valid. Progressive Am. Ins. Co. v. Vasquez, 350 N.C. 386, 515 S.E.2d 8 (1999).

The applicable UIM limit under this section will depend on two factors: (1) the number of claimants seeking coverage under the UIM policy; and (2) whether the negligent driver's liability policy was exhausted pursuant to a per-person or per-accident cap. When only one UIM claimant exists, the per-person limit under the policy will be the applicable UIM limit, but when more than one claimant is seeking UIM coverage, how the liability policy was exhausted will determine the applicable UIM limit. In particular, when the negligent driver's liability policy was exhausted pursuant to the per-person cap, the UIM policy's per-person cap will be the applicable limit. However, when the liability policy was exhausted pursuant to the per-accident cap, the applicable UIM limit will be the UIM policy's per-accident limit. North Carolina Farm Bureau Mut. Ins. Co. v. Gurley, 139 N.C. App. 178, 532 S.E.2d 846, 2000 N.C. App. LEXIS 818 (2000).

Where the injured parties' insurer provided $500,000 of underinsured motorist coverage in any single accident, and the injured parties were each paid $100,000 by the tortfeasor's insurer, in determining the amount due to the injured parties, the total amount paid by the tortfeasor's insurer to the injured parties, $200,000, was to be subtracted from the $500,000 policy limits of the injured parties' insurer. Nationwide Mut. Ins. Co. v. Haight, 152 N.C. App. 137, 566 S.E.2d 835, 2002 N.C. App. LEXIS 891 (2002), cert. denied sub nom. Nationwide Mut. Ins. Co. v. Mills, 356 N.C. 675, 577 S.E.2d 627 (2003).

Rejection of Coverage Prior to Amendment. — Insured's rejection of underinsured motorists coverage, prior to the 1991 statutory amendment and prior to the approval of new form reflecting the substance of the statutory amendment, was not still valid and effective with respect to an accident that occurred after the rejection form had been substantially revised and after the policy had been renewed. Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995).

Provision of Underinsurance. — "Underinsurance" provides a type of insurance coverage that allows an insured to be indemnified by his own insurer, in whole or in part, for damages caused by a negligent motorist who is insured inadequately. North Carolina Farm Bureau Mut. Ins. Co. v. Hilliard, 90 N.C. App. 507, 369 S.E.2d 386 (1988), decided under 1983 version of § 20-279.21.

Definition of Underinsured Does Not Incorporate Definition of Uninsured. — The legislature did not intend to fully incorporate the definition of an uninsured motor vehicle into the definition of an underinsured highway vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

Strict Compliance Needed for UIM Rejection to Be Effective. — An automobile insurance policy issued by defendant provided underinsured motorist (UIM) coverage to plaintiff for injuries sustained as a passenger where insured had rejected UIM coverage on company's own form rather than on one promulgated by the Rate Bureau; "substantial compliance" was irrelevant. Sanders v. American Spirit Ins. Co., 135 N.C. App. 178, 519 S.E.2d 323 (1999).

Insurer's Failure to Provide Opportunity to Reject Uninsured Motorist Limits. — G.S. 20-279.21 established that an insured must be given the initial opportunity to reject or select different underinsured motorist (UIM) limits; insurer's total failure to provide an opportunity to reject UIM coverage or select different limits violated this requirement, and thus entitled the insured to the highest available limit of UIM coverage of $1,000,000. Williams v. Nationwide Mut. Ins. Co., 174 N.C. App. 601, 621 S.E.2d 644, 2005 N.C. App. LEXIS 2486 (2005).

Insurer was required to strictly adhere to the required format for rejection of underinsured motorist (UIM) coverage; written rejection of UIM coverage was invalid where, although the written rejection had virtually identical language to the UIM rejection form promulgated by the North Carolina Rate Bureau, the insurance company had shrunk the rejection form and included it in its application. Erie Ins. Exch. v. Miller, 160 N.C. App. 217, 584 S.E.2d 857, 2003 N.C. App. LEXIS 1728 (2003).

But Certain Additional Language Is Allowed. — Additional, explanatory language, designed to aid the insured in making an informed decision on whether to select or reject UM and UIM coverage, did not render a selection/rejection form invalid. Blackburn v. State Farm Mut. Auto. Ins. Co., 353 N.C. 369, 547 S.E.2d 409, 2000 N.C. App. LEXIS 1295 (2000).

Accident victim's insurer was properly granted summary judgment on its claim that it did not have to provide the victim with underinsured motorist coverage (UIM) because the victim rejected UIM when she completed her insurance application, and the insurer's UIM selection/rejection form complied with a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of the North Carolina Department of Insurance pursuant to G.S. 20-279.21(b)(4); the only deviations from the promulgated form were the insurer's inclusion of additional language which explained uninsured and underinsured motorist coverage, and the insurer's use of 10-point type rather than 12-point type. Stegenga v. Burney, 174 N.C. App. 196, 620 S.E.2d 302, 2005 N.C. App. LEXIS 2300 (2005).

Rejection of Coverage After Amendment. — An automobile liability insurer is required to offer insureds the opportunity to select underinsured motorist coverage limits in an amount between the statutory minimum and $1,000,000 and to obtain a valid rejection or selection of different underinsured motorist coverage limits under this option, notwithstanding that the policy is a renewal policy. State Farm Mut. Auto. Ins. Co. v. Fortin, 350 N.C. 264, 513 S.E.2d 782 (1999).

Rejection of Coverage Held Invalid. — Plaintiff's rejection of underinsured motorist coverage was not effective where she was not eligible for UIM coverage at the time the rejection was signed because her policy limits did not exceed the minimum referred to in subdivision (b)(4) of this section. McNally v. Allstate Ins. Co., 142 N.C. App. 680, 544 S.E.2d 807, 2001 N.C. App. LEXIS 172 (2001).

Where terms of policy expressly excluded underinsured motorist (UIM) coverage, this section did not require an excess personal liability policy to provide UIM coverage. Piazza v. Little, 350 N.C. 585, 515 S.E.2d 219 (1999).

State-Owned Vehicles Can Be Underinsured Vehicles. — An underinsured highway vehicle as defined in subsection (b)(4) of this section can include a state-owned vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

Definition of "Person Insured." — Underinsured motorist coverage (UIM), is governed by subdivision (b)(4) of this section which incorporates by reference the definition of "persons insured" that is found in subdivision (b)(3) of this section, dealing with uninsured motorists (UM) coverage. Thus, for both UM and UIM coverage, "persons insured" is defined by subdivision (b)(3) of this section. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

When one member of a household purchases first-party underinsured motorist (UIM) coverage, it may fairly be said that he or she intends to protect all members of the family unit within the household. The legislature recognized this family unit for purposes of UIM coverage when it defined "persons insured" of the first class as "the named insured and, while resident of the same household, the spouse of any named insured and relatives of either." These persons insured of the first class are protected, based on their relationship, whether they are injured while riding in one of the covered vehicles or otherwise. Harris ex rel. Freedman v. Nationwide Mut. Ins. Co., 332 N.C. 184, 420 S.E.2d 124 (1992).

Where plaintiff lived in the same household as his father, the owner of an automobile insurance policy providing underinsured motorist (UIM) coverage for two vehicles, plaintiff was a "person insured" under the policy and was entitled to the same rights to stack coverages intrapolicy as the owner. Miller v. Nationwide Mut. Ins. Co., 112 N.C. App. 295, 435 S.E.2d 537 (1993), cert. denied, 335 N.C. 770, 442 S.E.2d 519 (1994).

A person who was not a "named insured" under this statute or as defined in the policy was not a "person insured" under subdivision (b)(4) of this section. Brown v. Truck Ins. Exch., 103 N.C. App. 59, 404 S.E.2d 172, cert. denied, 329 N.C. 786, 408 S.E.2d 515 (1991).

Recovery Where No Legal Entity Is "Named Insured". — Summary judgment for plaintiff was appropriate and the estate of plaintiff's son could recover under his parents' automobile insurance policy, although policy had been placed in the name of a piece of property parents owned which was incapable of being legally classified as an individual or as an entity, commercial or otherwise, as the insured; the court resolved the ambiguity created by designating a place as the insured in favor of the plaintiff who paid the premiums and obtained the family coverage. Stockton v. North Carolina Farm Bureau Mut. Ins. Co., 139 N.C. App. 196, 532 S.E.2d 566, 2000 N.C. App. LEXIS 799 (2000).

When Named Insured Is a Corporation. — The term "named insured" does not include officers, directors, or stockholders of a corporation when the named insured is the corporation. Busby v. Simmons, 103 N.C. App. 592, 406 S.E.2d 628 (1991).

Employees of a corporation were not named insureds by the terms of the corporation's automobile liability policy and therefore were not class one insureds under this section for the purpose of underinsured motorist coverage. Sproles v. Greene, 329 N.C. 603, 407 S.E.2d 497 (1991).

Eligibility for Underinsurance When Covered Under (b)(3) and (b)(4). — Where tortfeasor qualified as both an uninsured motorist pursuant to subdivision (b)(3) of this section, and as an underinsured motorist under subdivision (b)(4), plaintiff's claim seeking recovery for underinsured motorist insurance stated a claim upon which relief could be granted. Monti ex rel. United States v. United Servs. Auto. Ass'n, 108 N.C. App. 342, 423 S.E.2d 530 (1992), cert. denied, 334 N.C. 164, 432 S.E.2d 363 (1993).

The distinction between an underinsured motorist policy purchased by the employee and one covering the employee but purchased by his spouse while a resident of the same household is unimportant. Creed v. R.G. Swaim & Son, 123 N.C. App. 124, 472 S.E.2d 213 (1996).

Intentional and Fraudulent Misrepresentations. — An insurer may deny UIM coverage in excess of the statutory minimum based upon intentional and fraudulent misrepresentations or concealment by an insured in procurement of an automobile liability insurance policy. Hartford Underwriters Ins. Co. v. Becks, 123 N.C. App. 489, 473 S.E.2d 427 (1996).

Claim Estimates Properly Excluded as Evidence. — In personal injury action against plaintiff's UIM insurer, admitting claim estimates prepared by the insurer as admissions of a party opponent would unduly prejudice the defense and circumvent the policy of having the jury focus on the facts and not the existence of liability insurance. Braddy v. Nationwide Mut. Liab. Ins. Co., 122 N.C. App. 402, 470 S.E.2d 820 (1996).

Vehicle Not Included. — An underinsured vehicle, as that term is used in subdivision (b)(4), does not include a tort-feasor's vehicle whose available liability insurance is less than the relevant underinsured motorist (UIM) coverage. Ray v. Atlantic Cas. Ins. Co., 112 N.C. App. 259, 435 S.E.2d 80, cert. denied, 335 N.C.

559, 439 S.E.2d 151 (1993).

An owned vehicle exclusion is contrary to the terms of subdivision (b)(4), whether it is judicially imposed or whether it is contained in the underinsured motorist (UIM) portion of the policy. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664 (1994), aff'd, 342 N.C. 482, 467 S.E.2d 34 (1996).

Policy Provisions Which Excluded "Owned Vehicles" from Underinsured Motorist (UIM) Coverage Were Invalid. — An underinsured highway vehicle as defined in subdivision (b)(4) can include a motor vehicle owned by the named insured, and the provisions in policies issued by an insurer attempting to exclude such coverage are invalid and unenforceable. State Farm Mut. Auto. Ins. Co. v. Young, 122 N.C. App. 505, 470 S.E.2d 361 (1996).

Family Owned Exclusion Clause. — The existence of a family-owned exclusion clause in insured's insurance policy did not affect whether plaintiffs were entitled to underinsured motorist (UIM) benefits; insured could collect UIM benefits under his automobile policy for injuries suffered while riding his motorcycle, notwithstanding the family-owned exclusion clause. Honeycutt v. Walker, 119 N.C. App. 220, 458 S.E.2d 23 (1995).

Policy, which under the underinsured clause excluded all other owned vehicles not listed in the policy, was in violation of subdivision (b)(4) of this section. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

An underinsured highway vehicle as defined in subdivision (b)(4) can include a motor vehicle owned by the named insured, and the provisions in policies issued by an insurer attempting to exclude such coverage are invalid and unenforceable. State Farm Mut. Auto. Ins. Co. v. Young, 122 N.C. App. 505, 470 S.E.2d 361 (1996).

Terms of Coverage Are Within Control of Parties. — Underinsured motorists coverage is not required by law, since the insured may reject the coverage, and therefore the terms of the coverage are within the control of the parties. Aills v. Nationwide Mut. Ins. Co., 88 N.C. App. 595, 363 S.E.2d 880 (1988).

Where there are separate and distinct excess liability and underlying policies, underinsured coverage is not written into the excess liability policy by operation of law and exists only if it is provided by the contractual terms of the excess policy. Progressive Am. Ins. Co. v. Vasquez, 350 N.C. 386, 515 S.E.2d 8 (1999).

Coverage Tied to Vehicle Occupied. — Prior to the 1991 amendment to this section by Session Laws 1991, c. 646, ss. 1 to 4, where an injured party was not a named insured or spouse, and was not a family member residing in the household of the named insured at the time of the accident, she was a "Class II" insured, and the underinsured motorist coverage available to her was tied to the vehicle occupied by her at the time of the accident. Nationwide Mut. Ins. Co. v. Silverman ex rel. Radja, 332 N.C. 633, 423 S.E.2d 68 (1992).

Scope of Permissive Uses. — Where a drunken rental car driver was using the rental car with the rental company's permission, the driver was insured under a liability policy; though the driver violated her rental agreement by driving drunk, she did not exceed the scope of permissive use. United Servs. Auto. Ass'n v. Rhodes, 156 N.C. App. 665, 577 S.E.2d 171, 2003 N.C. App. LEXIS 197 (2003).

Exhaustion clause of insurance policy and the similar wording of subdivision (b)(4) obligate the insurer to pay only after the applicable liability bonds or policies have been exhausted by payment of a judgment or settlement. Silvers v. Horace Mann Ins. Co., 90 N.C. App. 1, 367 S.E.2d 372 (1988) (decided prior to 1985 amendments).

Given the fact that plaintiff settled for the maximum amount available under the tortfeasor's liability policy, it would contravene the purposes behind underinsured motorists (UIM) coverage to read the "legally entitled to recover damages" provision as a bar to plaintiff's recovery. In addition, given the language of the exhaustion clause which urges settlement or judgment before obligating the UIM carrier, it was reasonable for plaintiff to believe that she was required to settle or obtain a judgment against the tortfeasors and their liability insurer before seeking payment from her insurer. Silvers v. Horace Mann Ins. Co., 90 N.C. App. 1, 367 S.E.2d 372 (1988) (decided prior to 1985 amendments).

Subdivision (b)(4) requires a uninsured motorist (UIM) plaintiff to exhaust all remedies by seeking payment of judgments or settlements from the tortfeasor and liability insurer before seeking payment form the UIM insurer. Spivey v. Lowery, 116 N.C. App. 124, 446 S.E.2d 835, cert. denied, 338 N.C. 312, 452 S.E.2d 312 (1994).

Once an advancement is made and the underinsured claim is settled prior to exhaustion of primary policy limits, the underinsured motorist carrier is pursuing "its claim" and not that of the insured. The underinsured motorist carrier is not required to be designated as a party plaintiff "except upon its own election." State Farm Mut. Auto. Ins. Co. v. Blackwelder, 332 N.C. 135, 418 S.E.2d 229 (1992).

Determination as to Primary and Excess Coverage. — Trial court erred in finding that insurance company which insured plaintiffs' two vehicles, neither of which was involved in the subject accident, was primary and that the underinsured motorist coverage for the vehicle involved in the accident was excess; the plaintiffs were second-class insureds on the defendant's UIM policy and first-class on their own policy, but there was no need to pro-rate or consider classes where the "other insurance" clauses were not mutually repugnant, but could be read together harmoniously. Hlasnick v. Federated Mut. Ins. Co., 136 N.C. App. 320, 524 S.E.2d 386, 2000 N.C. App. LEXIS 18 (2000), aff'd, in part, and cert. dismissed, in part, 353 N.C. 240, 539 S.E.2d 274 (2000).

Underinsured motorist coverage can never be "excess or additional coverage" within the meaning of subsection (g) for the purpose of avoiding the requirement of subdivision (b)(4) of intrapolicy and interpolicy stacking; since underinsured motorist (UIM) coverage in any given policy must always equal the policy's basic liability coverage and that coverage must always exceed the minimum mandatory amount, there can never be any excess or additional UIM coverage. Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759, rehearing denied, 325 N.C. 437, 384 S.E.2d 546 (1989).

UIM Coverage in Separate Policies. — Underinsured motorist (UIM) coverage is available under a policy issued to a named insured; true when the vehicle owned by the named insured and involved in his injuries is insured under a separate policy not containing UIM coverage. Bass v. North Carolina Farm Bureau Mut. Ins. Co., 332 N.C. 109, 418 S.E.2d 221 (1992).

Insured was properly awarded the limits of a secondary policy's underinsured motorist (UIM) of $1,000,000 since a primary policy had a $250,000 limit and the $30,000 the insured had received from an operator's exhausted liability policy was credited against the UIM coverage under the primary policy; stacking was permitted under G.S. 20-279.21(b)(4). Martini v. Companion Prop. & Cas. Ins. Co., — N.C. App. —, 679 S.E.2d 156, 2009 N.C. App. LEXIS 1099 (July 7, 2009).

Insured was held to have received two separate policies of underinsured coverage, although the insurance company contended that only one policy was issued and that it included the later-added fourth vehicle, where the insured was told she could not add her fourth vehicle to the existing policy, was billed separately, and where the billings showed different renewal dates for the two policies. Iodice v. Jones, 135 N.C. App. 740, 522 S.E.2d 593, 1999 N.C. App. LEXIS 1238 (1999).

Availability of Coverage Not Dependent upon Tortfeasor's Liability Limits. — The availability of underinsured motorist coverage to an injured victim does not depend upon the tortfeasor's liability limits being less than those on the vehicle with the underinsured motorist coverage. Amos v. North Carolina Farm Bureau Mut. Ins. Co., 103 N.C. App. 629, 406 S.E.2d 652, aff'd, 332 N.C. 340, 420 S.E.2d 123 (1992).

Controlling Effect of Article on Terms of Stacking. — Despite the fact that underinsured motorist coverage may ultimately be rejected by the insured, the provisions of the Motor Vehicle Safety and Financial Responsibility Act (this Article) relating to intrapolicy stacking of uninsured motorist coverage control; therefore, the terms of stacking are controlled not by the parties and the insurance contract, but by the Act. Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759, rehearing denied, 325 N.C. 437, 384 S.E.2d 546 (1989).

Stacking Not Required Prior to Amendment. — The 1983 version of subdivision (b)(4), which was prior to 1985 amendment, did not require that the underinsured motorist coverages in the same policy be aggregated or stacked. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 335 N.C. 533, 439 S.E.2d 112 (1994).

Summary Judgment Improper Where Stacking Issue Unresolved. — Summary judgment was inappropriate where a genuine issue of material fact existed as to whether the policy covering a dump truck met any of the statutory definitions of a "private passenger motor vehicle" under G.S. 58-40-10(b) and could be stacked with the other policies under this section. Erwin v. Tweed, 142 N.C. App. 643, 544 S.E.2d 803, 2001 N.C. App. LEXIS 175 (2001), review denied, 353 N.C. 724, 551 S.E.2d 437 (2001).

Interpolicy and Intrapolicy Stacking. — The legislature intended subdivision (b)(4) of this section to require both interpolicy and intrapolicy stacking of underinsured coverages. Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759, rehearing denied, 325 N.C. 437, 384 S.E.2d 546 (1989).

Interpreting subdivision (b)(4) to allow both interpolicy and intrapolicy stacking is consistent with the nature and purpose of the Act, which is to compensate innocent victims of financially irresponsible motorists. Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759, rehearing denied, 325 N.C. 437, 384 S.E.2d 546 (1989).

The language of Motor Vehicle Safety and Financial Responsibility Act is intended to permit both interpolicy and intrapolicy stacking of multiple vehicles for underinsured motorist (UIM) coverage by the policy owner and prevails over any inconsistent language found in a policy. No distinction exists for UIM coverage purposes between the policy owner and a nonowner family member covered by the policy. Harris v. Nationwide Mut. Ins. Co., 103 N.C. App. 101, 404 S.E.2d 499, aff'd, 332 N.C. 184, 420 S.E.2d 124 (1992).

Public policy reasons for allowing

intrapolicy stacking of Underinsured Motorist (UIM) coverage are that stacking: (1) enhances the injured party's potential for full recovery of all damages; (2) prevents the anomalous situation that an insured is better off — for purposes of the underinsured motorist coverage — if separate policies were purchased for each vehicle; (3) gives the insured due consideration for the separate premiums paid for each UIM coverage within a policy; and (4) is consistent with preexisting common law by which automobile insurance policies have been construed to require intrapolicy stacking of medical payments coverage. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 107 N.C. App. 26, 418 S.E.2d 680 (1992), petition denied as to additional issues, 333 N.C. 346, 426 S.E.2d 709 (1993), modified on other grounds, 335 N.C. 533, 439 S.E.2d 112 (1994).

Stacking of UIM Coverages Where Insured Holds More Than One Policy Covering Several Vehicles. — Where insurer sold insured two policies which provided four vehicles with uninsured motorist coverage and where the policies limited the liability for underinsured (UIM) coverage, subdivision (b)(4) of this section controlled, and permitted the insured to stack or aggregate the UIM coverages for each vehicle in both policies. Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759, rehearing denied, 325 N.C. 437, 384 S.E.2d 546 (1989).

To determine whether plaintiff could stack the underinsured motorist coverages under two policies, the court would examine the policy language found in the "Other Insurance" provision of the policy issued by defendant in which the Uninsured Motorist (UM)/UIM endorsement modified the "Other Insurance" provision of the UM coverage agreement with respect to the damages the plaintiff was entitled to recover from an uninsured or underinsured motorist. Bass v. North Carolina Farm Bureau Mut. Ins. Co., 103 N.C. App. 272, 405 S.E.2d 370, aff'd, 332 N.C. 109, 418 S.E.2d 221 (1992).

Trial court erred in denying an insurance company's summary judgment motion and in granting injured persons' summary judgment motion in a case seeking a declaration that the injured persons were allowed to stack the UIM coverage of their two policies; stacking of underinsured motorist (UIM) coverages is permitted where each of the multiple policies providing stackable UIM coverages were written at limits that exceeded the statutorily-required minimum liability amount, but where one of two policies at issue provided liability coverage with limits equal to the statutorily-required minimum amount of $25,000/$50,000, under G.S. 20-279.21(b)(4), no UIM coverage was available with that policy — thus, there was no additional UIM coverage available to be stacked with the $100,000 UIM coverage provided by the first policy, which was equal to the amount already paid under the tortfeasor's exhausted liability policy. Purcell v. Downey, 162 N.C. App. 529, 591 S.E.2d 556, 2004 N.C. App. LEXIS 186 (2004).

For purposes of stacking, coverage followed insured rather than vehicle. Where plaintiff was a named insured in two policies, but the vehicle involved in the accident was not listed in the policy issued by defendant, plaintiff could recover under the underinsured motorist (UIM) provision of the policy issued by defendant as well as the other policy. The definition of "persons insured" for UM/UIM coverage strongly suggested that the UM/UIM coverage for family members follows the person rather than the vehicle. Bass v. North Carolina Farm Bureau Mut. Ins. Co., 103 N.C. App. 272, 405 S.E.2d 370, aff'd, 332 N.C. 109, 418 S.E.2d 221 (1992).

Stacking Permitted for Private Passenger Vehicles. — Insurance company's owned vehicle exclusion was unenforceable and the insureds were entitled to stack their underinsured motorist (UIM) coverage if the vehicles listed in the policy were private passenger motor vehicles. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664 (1994), aff'd, 342 N.C. 482, 467 S.E.2d 34 (1996).

Stacking Not Permitted. — No underinsured motorist benefits were provided through decedent's business auto policy because the covered vehicle was not a "private passenger motor vehicle" as required for interpolicy stacking under subsection (b)(4). North Carolina Farm Bureau Mut. Ins. Co. v. Stamper, 122 N.C. App. 254, 468 S.E.2d 584 (1996).

Stacking Allowed in Determining Whether Tortfeasor's Car Is an "Underinsured Highway Vehicle". — The language of subdivision (b)(4) allows the stacking of an insured's coverages in determining whether a tortfeasor's vehicle is an "underinsured highway vehicle." The statute compares the aggregate liability coverage of the tortfeasor's vehicle to the applicable limits of liability under the owner's policy, meaning the aggregate or stacked "limits" under the policy. Harris ex rel. Freedman v. Nationwide Mut. Ins. Co., 332 N.C. 184, 420 S.E.2d 124 (1992).

Underinsured motorist (UIM) coverage for a nonowner Class I insured under one policy could be stacked with the UIM coverage under another policy in which the party was also a nonowner insured. Mitchell v. Nationwide Ins. Co., 110 N.C. App. 16, 429 S.E.2d 351 (1993), pet. disc. rev. granted, 334 N.C. 164, 432 S.E.2d 363 (1993), aff'd, 335 N.C. 433, 439 S.E.2d 110 (1994).

Vehicle passenger and the passenger's

mother were entitled to stack the driver's and the mother's insurance policies in determining that the vehicle involved in a one vehicle accident was an underinsured highway vehicle under G.S. 20-279.21(b)(4) for purposes of underinsured motorist insurance coverage. Furthermore, the driver's insurer was entitled to the entire credit for its liability payment as the primary insurer. Benton v. Hanford, — N.C. App. —, 671 S.E.2d 31, 2009 N.C. App. LEXIS 129 (Jan. 20, 2009).

An individual named in — but not the "owner" of — a motor vehicle insurance policy is permitted to "stack" underinsured coverage when the single policy insures two vehicles. Davis v. Nationwide Mut. Ins. Co., 106 N.C. App. 221, 415 S.E.2d 767, cert. denied, 332 N.C. 343, 421 S.E.2d 146 (1992).

Family Unit Entitled to Intrapolicy Stacking. — The principles which allow intrapolicy stacking when the owner is injured also allow intrapolicy stacking when the injured party is a person insured of the first class. Harris ex rel. Freedman v. Nationwide Mut. Ins. Co., 332 N.C. 184, 420 S.E.2d 124 (1992).

This section's definition of "underinsured highway vehicle" did not prohibit the issuance of multi-tier UIM coverage where the policy provided UIM coverage meeting the minimum statutory requirements but the purchaser of the fleet policy paid additional premiums to provide higher limits of UIM coverage to certain persons insured in excess of the statutory floor. Hlasnick v. Federated Mut. Ins. Co., 353 N.C. 240, 539 S.E.2d 274, 2000 N.C. LEXIS 898 (2000).

Automobile accident victim was entitled to stack with his own policy providing underinsured motorist benefits the policies of his father and brother, both interpolicy and intrapolicy. Any amount he received under those policies would be reduced by the amount he received from the tortfeasor's exhausted liability policy. Harrington v. Stevens, 334 N.C. 586, 434 S.E.2d 212 (1993).

Failure to Obtain Insurer's Consent. Plaintiff's failure to obtain insurer's consent before entering into consent judgment does not bar its recovery against insurer for underinsured motorist coverage, unless insurer establishes material prejudice that was caused by plaintiff's failure to notify it and obtain consent to settlement as required by the policy. Silvers v. Horace Mann Ins. Co., 324 N.C. 289, 378 S.E.2d 21 (1989).

Where defendant insurer waived its rights to subrogation for the payment of uninsured and underinsured motorist claims, it suffered no prejudice by plaintiff's noncompliance with the notice provisions of the policy. Rinehart v. Hartford Cas. Ins. Co., 91 N.C. App. 368, 371 S.E.2d 788 (1988).

General Release Not Altered by Consent. — Uninsured motorist (UIM) carrier's consent to settlement did not alter the legal effect of a general release signed by plaintiff. Spivey v. Lowery, 116 N.C. App. 124, 446 S.E.2d 835, cert. denied, 338 N.C. 312, 452 S.E.2d 312 (1994).

Primary Insurer Not Entitled to Credit for Settlement with Secondary Insurer. — Since secondary insurer was not required to pay any of its UIM coverage until the policy limit of primary insurer's underinsured motorist coverage (UIM) had been exceeded, the primary insurer was not entitled to a credit for $25,000 settlement between plaintiff and the secondary insurance carrier. Isenhour v. Universal Underwriters Ins. Co., 345 N.C. 151, 478 S.E.2d 197 (1996).

Limits of Coverage. — Subdivision (b)(4) of this section provides that the limit of payment for underinsured motorist coverage is only the difference between the liability insurance that is applicable (the limit on the tortfeasor's liability coverage) and the limits of the undersigned motorist coverage as specified in the owner's policy (the limit on the undersigned motorist coverage in the plaintiff's policy with the defendant). Davidson v. United States Fid. & Guar. Co., 78 N.C. App. 140, 336 S.E.2d 709 (1985), aff'd, 316 N.C. 551, 342 S.E.2d 523 (1986).

Where the unambiguous terms of plaintiff's underinsured motorist coverage provided that any amount payable by the defendant would be reduced by all sums paid because of bodily injury by those legally responsible, the $25,000.00 limit on the plaintiff's underinsured motorist coverage would be reduced by the $25,000.00 which the plaintiff received in settlement from tortfeasor, leaving nothing due to plaintiff from defendant. Davidson v. United States Fid. & Guar. Co., 78 N.C. App. 140, 336 S.E.2d 709 (1985), aff'd, 316 N.C. 551, 342 S.E.2d 523 (1986).

No Statutory Priority of Payments for Insurance Policies. — There is no provision of the Act which expressly establishes a statutory priority of payment among different insurance policies. However, this section does allow an insurance liability policy to "provide for the pro-rating of the insurance thereunder with other valid and collectible insurance." North Carolina Farm Bureau Mut. Ins. Co. v. Hilliard, 90 N.C. App. 507, 369 S.E.2d 386 (1988) (decided under 1983 version of § 20-279.1).

Court of Appeals did not err in holding that the wife of the owner-insured was entitled as a Class I insured to underinsured motorist (UIM) coverage, when the wife was injured while riding in another car owned by her and insured by a different carrier under a separate policy not containing UIM coverage. Grain

Dealers Mut. Ins. Co. v. Long, 332 N.C. 477, 421 S.E.2d 142 (1992).

Underinsured Carrier as Unnamed Defendant. — An underinsured motorist carrier defendant, at its election, must be permitted to appear as an unnamed defendant in the liability phase of a trial, and this is a substantial right. Church v. Allstate Ins. Co., 143 N.C. App. 527, 547 S.E.2d 458, 2001 N.C. App. LEXIS 315 (2001).

In a mail carrier's negligence suit regarding a car accident, where the mail carrier argued it was error to deny the mail carrier's motion in limine seeking to allow the attorney for the mail carrier's underinsured motorist carrier to be referred to as representing the "unnamed defendant," the mail carrier's argument failed because the carrier did not claim any specific prejudice and the underinsured motorist insurer had the right to appear in defense of the claim without being named as a party. Seay v. Snyder, 181 N.C. App. 248, 638 S.E.2d 584, 2007 N.C. App. LEXIS 94 (2007).

Uninsured Motorist Carrier's Right of Subrogation. — This section allows the primary liability insurer to apply for court approval for release from further liability or obligation to defend upon payment of its primary liability limits and establishes a right of subrogation for the uninsured motorist carrier against the underinsured motorist if, upon notice of a tentative settlement with the underinsured motorist, the underinsured motorist carrier advances to the claimant the amount of the tentative settlement. Gunn v. Whichard, 707 F. Supp. 196 (E.D.N.C. 1988).

In the absence of an underinsured motorist carrier, the settlement funds from the primary liability carrier would be paid to the claimant. However, in the underinsured motorist context, the operation of subdivision (b)(4) requires the underinsured motorist carrier to advance an amount equal to the primary carrier's tentative settlement in order to preserve its subrogation rights. Gunn v. Whichard, 707 F. Supp. 196 (E.D.N.C. 1988).

A provider of underinsured motorist coverage who advances the policy limits of the liability carrier does not obtain an independent and separate right of reimbursement and is therefore limited to the rights of the claimant to which it is subrogated. Nationwide Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 109 N.C. App. 281, 426 S.E.2d 298, cert. denied, 333 N.C. 792, 431 S.E.2d 26 (1993).

Where a drunk driver's carrier tendered policy limits ($50,000) to defendants — an accident victim and the estates of four persons killed in a collision — and plaintiff, the insurer of one the decedent's parents, paid $250,000 in underinsured motorist (UIM) benefits, pursuant to the policy, which tracked the language of G.S. 20-279.21(b)(3), plaintiff insurer was subrogated to the rights of defendants as to their dram shop claims against the bars that served the drunk driver; however, it was obliged to its pay proportionate share of the attorneys' fees defendants incurred in the dram shop litigation. Farm Bureau Ins. Co. of N.C., Inc. v. Blong, 159 N.C. App. 365, 583 S.E.2d 307, 2003 N.C. App. LEXIS 1497 (2003), cert. denied, 357 N.C. 578, 589 S.E.2d 125 (2003).

Underinsured insurance carrier cannot assert a claim of contribution because the carrier is not a tortfeasor; however, the carrier can bring a direct action against one of the defendants even though that defendant executed a release in favor of the other defendants. Johnson v. Hudson, 122 N.C. App. 188, 468 S.E.2d 64 (1996).

By requiring policyholder to specifically request underinsured motorist coverage, insurer failed to comply with subdivision (b)(4) of this section. The statutory coverage was thus written into the policy by operation of law, and would be in an amount equal to her liability coverage. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 90 N.C. App. 746, 370 S.E.2d 258 (1988), aff'd, 324 N.C. 221, 376 S.E.2d 761 (1989).

Underinsured Motorist Endorsement Held Applicable to Insured Riding in Nonowned Vehicle. — Plaintiff, who was injured while riding as a passenger in a Jeep owned and operated by another individual, was covered by his father's policy, which contained an underinsured motorist endorsement, even though his injuries were unrelated to the use or operation of his father's van, which was the insured vehicle under the policy. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986), expressly limiting its holding to allowing underinsured motorist coverage for insureds operating, or riding in, a nonowned vehicle.

Use of Previous Judgment Against Underinsured Motorist in Later Action Against Underinsurance Carrier. — When the insured fails to comply with subdivision (b)(3) as to service of summons, complaint or other process, he may not use the previous judgment against the underinsured motorist as res judicata on the issue of liability or damages in a later action against its underinsurance carrier. Silvers v. Horace Mann Ins. Co., 90 N.C. App. 1, 367 S.E.2d 372 (1988), modified on other grounds, 324 N.C. 289, 378 S.E.2d 21 (1989) (decided prior to 1985 amendments).

Provisions of Statute Control Over Expressed Intentions of Parties. — Whatever the expressed intentions of the insurer and the insured, the rejection form executed by insured, because it failed to comply with the provisions of subsection (b)(4), did not constitute a proper and effective rejection of UIM coverage equal to the policy's liability limits. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

Conflict of Statute Provisions Resolved in Favor of Insured. — Plaintiff's entry of a consent judgment with tortfeasors and their carrier did not bar her as a matter of law from recovering under the Underinsured Motorist (UIM) coverage of her policy with insurer; where the statute provided that a release of the tortfeasor acts to release the UIM insurance carrier of its derivative liability and the statute and the policy terms regarding UIM coverage appeared to require the insured to exhaust all liability policies by judgment or settlement before the insurer was obligated to pay under the UIM coverage, the conflict was resolved in favor of the insured because of the ambiguity and because of the intent behind the statute. Silvers v. Horace Mann Ins. Co., 324 N.C. 289, 378 S.E.2d 21 (1989) (decided under law prior to 1985 amendments).

Where vehicle driven by decedent was a household-owned vehicle not insured under one of two policies held by plaintiff, decedent's father, the underinsured motorist (UIM) coverage provided by that policy was not available to compensate plaintiff for decedent's death. Smith v. Nationwide Mut. Ins. Co., 97 N.C. App. 363, 388 S.E.2d 624 (1990).

Basis for Declaratory Judgment. — Exhaustion of the limits of the tortfeasor's liability policy by payment of the limits of the policy by tortfeasor's insurer into deceased's estate triggered the applicability of plaintiff's underinsured motorist (UIM) coverage. Refusal of decedent's insurer to state the extent of the UIM coverage under two policies at issue sparked the actual controversy between plaintiff and insurer which provided the basis for a declaratory judgment suit. Smith v. Nationwide Mut. Ins. Co., 97 N.C. App. 363, 388 S.E.2d 624 (1990), rev'd on other grounds, 328 N.C. 139, 400 S.E.2d 44, rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

Set-Off From UIM Coverage to Extent Workers' Compensation Benefits Paid. — Insurance companies that provided underinsured motorist (UIM) coverage to a person who was killed while working for the North Carolina Department of Transportation (DOT) were required to pay the amount of loss sustained by the decedent's estate that was not compensated by a person who caused the employee's death, up to the limits of the UIM coverage, but were given a credit for the amount of workers' compensation benefits the estate received from the DOT, less the amount of a lien which the DOT asserted. Austin v. Midgett, 159 N.C. App. 416, 583 S.E.2d 405, 2003 N.C. App. LEXIS 1537 (2003).

Since G.S. 97-25 required the state industrial commission to find as fact that services were rehabilitative in nature and were reasonably required to effect a cure or give relief in order to find that a workers' compensation carrier was entitled to a lien against payments made for rehabilitative services, those services were not a benefit to an injured motorist who received worker's compensation benefits as a matter of law; since a specific determination was required as to whether the services conferred a benefit to the motorist, and since an underinsured motorist carrier did not provide any proof of such a benefit, a credit to the carrier for payments made through workers' compensation to a rehabilitative center were properly excluded from the calculation of how much credit the carrier was entitled to against the payments it had to make to the motorist. Walker v. Penn Nat'l Sec. Ins. Co., 168 N.C. App. 555, 608 S.E.2d 107, 2005 N.C. App. LEXIS 349 (2005).

Underinsured Benefits Reduced by Workers' Compensation Benefits and Liability Payments. — The liability of an automobile insurer, who was also the workers' compensation carrier, for underinsured motorist benefits had to be reduced by the amount of workers' compensation benefits after reduction of the amount received from the tort-feasor's liability insurer. Manning v. Fletcher, 102 N.C. App. 392, 402 S.E.2d 648 (1991), aff'd, 331 N.C. 114, 413 S.E.2d 798 (1992).

An underinsured motorist coverage carrier under a business automobile policy is entitled to reduce its coverage by the amount of workers' compensation benefits which the same insurer paid to an injured worker. Brantley v. Starling, 336 N.C. 567, 444 S.E.2d 170 (1994).

In order to have amounts payable under underinsured motorist coverage reduced by amounts paid under workers' compensation coverage, subsection (e) does not require that the same entity provide both coverages. Brantley v. Starling, 336 N.C. 567, 444 S.E.2d 170 (1994).

This section does not mandate that underinsured motorist coverage be reduced by the amount of worker's compensation benefits, but instead allows for the insurer to limit liability by appropriate language in the contract of insurance. Progressive Am. Ins. Co. v. Vasquez, 129 N.C. App. 742, 502 S.E.2d 10 (1998), aff'd in part and rev'd in part and remanded on other grounds, 350 N.C. 386, 515 S.E.2d 8 (1999).

Underinsured motorist carrier was improperly denied a credit for payments that a negligent driver's liability insurance carrier made to the motorist who was driving the insured's vehicle; however, a credit for payments made to the motorist through worker's compensation to a rehabilitative center was properly not incorporated into the calculation of the credit it was entitled to for worker's compensation payment because the carrier failed to show any evidence existed in the appellate record that indicated the motorist received a benefit from that center — the availability of a credit for rehabilitative services was not available as a matter of law, but had to be established by the facts. Walker v. Penn Nat'l Sec. Ins. Co., 168 N.C. App. 555, 608 S.E.2d 107, 2005 N.C. App. LEXIS 349 (2005).

Where insurer provided both underinsured motorist coverage and workers' compensation coverage to employee injured in an automobile accident, in a business auto insurance policy insurer could reduce its underinsured motorist coverage obligation by the total amount of workers' compensation paid to employee. Manning v. Fletcher, 324 N.C. 513, 379 S.E.2d 854 (1989).

The mandatory nature of workers' compensation insurance carrier's lien on a recovery from the third-party tort-feasor is not altered by the discretionary authority of the trial judge to apportion the recovery between the employee and the insurance carrier, if that recovery is inadequate to satisfy the insurance carrier's lien. Manning v. Fletcher, 102 N.C. App. 392, 402 S.E.2d 648 (1991), aff'd, 331 N.C. 114, 413 S.E.2d 798 (1992).

No Set Off from UIM Coverage to Extent Workers' Compensation Benefits Paid. — Insurance company was not entitled to a set off from its underinsured motorist (UIM) coverage to the extent that workers' compensation benefits were paid or payable to truck driver's estate. Bowser v. Williams, 108 N.C. App. 8, 422 S.E.2d 355 (1992), cert. granted, 333 N.C. 343, 426 S.E.2d 703 (1993).

Where truck, in which plaintiff was riding at the time of the accident, was a business vehicle covered by the terms of the business auto policy with respect to underinsured motorist coverage, the trial court erred in finding that defendant insurance company, the underinsured motorist coverage carrier, was entitled to reduce its coverage by the amount of workers' compensation benefits which the same company paid to plaintiff. Brantley v. Starling, 111 N.C. App. 669, 433 S.E.2d 1, aff'd, 336 N.C. 567, 444 S.E.2d 170 (1994).

Insured may collect under multiple underinsured motorist policies up to, but not more than, his actual loss and a carrier having accepted premium for underinsured motorist coverage may not deny coverage on ground that other such insurance is available to insured. Sproles v. Greene, 100 N.C. App. 96, 394 S.E.2d 691 (1990), rev'd on other grounds, Sproles v. Integon Insurance Co., 329 N.C. 603, 407 S.E.2d 497 (1991).

Stacking. — The Underinsured Motorist (UIM) coverages provided in two separate automobile insurance policies issued to the individual plaintiff may be aggregated or "stacked" to compensate for the death of plaintiff's daughter, who was killed while driving a vehicle owned by the individual plaintiff and the daughter, even though the daughter and the vehicle were listed in only one of the policies. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

Amount of Underinsured Motorist Coverage. — Subdivision (b)(4) of this section explicitly requires, in substance, that unless rejected by policyholder, each automobile insurance policy issued in this state must have underinsured motorist coverage in same amount as personal injury liability coverage. Sproles v. Greene, 100 N.C. App. 96, 394 S.E.2d 691 (1990), rev'd on other grounds, Sproles v. Integon Insurance Co., 329 N.C. 603, 407 S.E.2d 497 (1991).

Trial court did not err by concluding that insurance company's policy provided plaintiff $750,000 underinsured motorist (UIM) coverage although insurance company argued that their uninsured motorist (UM) coverage was not issued under subsection (3), but was instead issued pursuant to the Reinsurance Facility's rules. The provisions of the Financial Responsibility Act, including this section, are written into every automobile liability policy as a matter of law. Although the policy purported to provide UIM coverage of only $25,000 per person and $50,000 per accident, subdivision (b)(4) of this section mandates that where UIM coverage is issued, it must be issued in an amount equal to the liability policy limits for bodily injury. Bowser v. Williams, 108 N.C. App. 8, 422 S.E.2d 355 (1992), cert. granted, 333 N.C. 343, 426 S.E.2d 703 (1993), overruled on other grounds, McMillan v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

The requirement of this section that underinsured motorist coverage be available when an automobile liability insurance policy has coverage exceeding the minimum limits refers to bodily injury coverage only, and does not apply if only the property damage limits exceed the minimum. Trosch v. State Farm Auto. Ins. Co., 132 N.C. App. 227, 510 S.E.2d 409 (1999).

Policyholder Must Have Liability Coverage in Excess of Minimum. — Under subdivision (b)(4), underinsured motorist coverage may be obtained only if the policyholder has liability insurance in excess of the minimum statutory requirement and, in any event, the underinsured motorist coverage must be in an amount equal to the policy limits for bodily injury liability specified in the policy. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

Admission of No Entitlement to Coverage. — Trial court did not err in granting an insurance company's motion to dismiss when insured, who had only maintained minimum coverage, admitted in his complaint that he was not entitled to underinsured motorist coverage. Pinney v. State Farm Mut. Ins. Co., 146 N.C. App. 248, 552 S.E.2d 186, 2001 N.C. App. LEXIS 858 (2001), cert. denied, 356 N.C. 438, 572 S.E.2d 788 (2002).

Entitlement to UIM Coverage. — Insureds qualified under an endorsement of their insurance policy as "named insureds" for underinsured motorist (UIM) coverage because UIM coverage followed the person, not the vehicle; further, the appellate court could see no reason to make an exception to G.S. 20-279.21(b)(4) and allow an "owned vehicle" exclusion to apply simply because the insurer believed that the insureds purchased insurance for a different reason than what the policy expressly protected them against and for which they paid additional premiums. Beddard v. McDaniel, 183 N.C. App. 476, 645 S.E.2d 153, 2007 N.C. App. LEXIS 1095 (2007).

While under G.S. 20-279.21(b)(4) an insurer was not subject to the jurisdiction of the North Carolina Rate Bureau and, therefore, was not required to use the Rate Bureau approved form, the insurer nonetheless was required to prove that an insured with a fleet of covered vehicles had validly rejected underinsured motorist (UIM) coverage or selected alternative UIM coverage limits. Because the record was devoid of any evidence that the insured made such a rejection or selection, the policy's liability limit for any auto applied with respect to UIM coverage. Great American Ins. Co. v. Freeman, — N.C. App. —, 665 S.E.2d 536, 2008 N.C. App. LEXIS 1612 (2008).

Clause in Policy Limiting Liability Under Multiple Policies Held Void as Conflicting with This Section. — Policy provision which states, "If this policy and any other auto insurance policy issued to you apply to the same accident, the maximum limit of liability for your injuries under all the policies shall not exceed the highest applicable limit of liability under any one policy," conflicts with subdivision (b)(4) of this section and is therefore unenforceable. Sproles v. Greene, 100 N.C. App. 96, 394 S.E.2d 691 (1990), rev'd on other grounds, Sproles v. Integon Insurance Co., 329 N.C. 603, 407 S.E.2d 497 (1991), overruled on other grounds, McMillian v. North Carolina Farm Bureau Mut. Ins. Co., 347 N.C. 560, 495 S.E.2d 352 (1998).

Exclusions for "household-owned" vehicle found only in the medical payments and liability portions of the policy did not create the "family member" exclusion under the underinsured motorist portion of the policy. Smith v. Nationwide Mut. Ins. Co., 328 N.C. 139, 400 S.E.2d 44 (1991), rehearing denied, 328 N.C. 577, 403 S.E.2d 514 (1991).

Van Was Not a "Private Passenger Motor Vehicle". — Van used to transport employees to and from their homes and place of employment was not a "private passenger motor vehicle" for purposes of allowing stacking of underinsured motorist coverage for various vehicles. Aetna Cas. & Sur. Co. v. Fields, 105 N.C. App. 563, 414 S.E.2d 69 (1992).

Coverage in Person Oriented. — Plaintiff, as the named insured under defendant's policy, was a first class insured and entitled to benefits under the underinsured motorist (UIM) coverage contained in the policy covering his automobiles, even though he was injured while riding his motorcycle which was not covered by the policy; UIM insurance is essentially person oriented, unlike liability insurance which is vehicle oriented. Honeycutt v. Walker, 119 N.C. App. 220, 458 S.E.2d 23 (1995).

Umbrella Coverage. — A multiple-coverage fleet insurance policy which includes umbrella coverage must offer underinsured motorist coverage equal to the liability limits under its umbrella coverage section. Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

Where there was no evidence in the record that insured either rejected in writing uninsured motorist or underinsured motorist coverage for the umbrella section of policy or selected a different limit, the umbrella section of the policy provided underinsured motorist coverage in an amount equal to the policy limits for automobile bodily injury liability as specified in the owner's umbrella coverage section of the policy. Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

Use of Rate Bureau Form Does Not Conflict with § 58-36-1. — By requiring rejection of UIM coverage to be accomplished by use of a specific Rate Bureau form, subsection (b)(4) does not effectively confer additional jurisdictional authority to the Rate Bureau, but is merely concerned with avoiding confusion and ambiguity through the use of a single standard and approved form, and mandating use of a Rate Bureau form for rejection of UIM coverage within a fleet policy does not necessarily conflict with G.S. 58-36-1. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

Policy Endorsement Not Considered Separate Policy. — An endorsement to an automobile insurance policy that provided additional liability coverage under certain circumstances was not a separate "owner's policy of liability insurance," but rather, was merely a part of the insured's larger comprehensive policy; thus, insurer was not required to have the insured execute another Selection/Rejection Form. American Mfrs. Mut. Ins. Co. v. Hagler, 132 N.C. App. 204, 511 S.E.2d 28 (1999).

Form for the rejection of underinsured motorist coverage was ambiguous and was construed in favor of coverage, where it differed from the Rate Bureau directive for the rejection of underinsured motorist coverage in that the sole option available to an insured by the rejection form was to reject uninsured motorist coverage limits, and the rejection form limited an insured who rejected liability limits UM coverage to selection of UM coverage only at a state's statutory limits. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

The form provided by an automobile liability insurer to its insured for selection of underinsured motorist benefits was invalid, where it was not the form promulgated by the appropriate state agency, and the insurer's form did not require that rejection of UIM coverage be made in writing, as required by this section, but by contacting the insured's agent. State Farm Mut. Auto. Ins. Co. v. Fortin, 350 N.C. 264, 513 S.E.2d 782 (1999).

Absent completion of an approved selection or rejection form, the insured was, as a matter of law, entitled to $1,000,000 in underinsured motorist coverage. Metropolitan Property & Cas. Ins. Co. v. Caviness, 124 N.C. App. 760, 478 S.E.2d 665 (1996).

Coverage Not Required. — Automobile insurance policy which provided only the minimum statutorily required coverage of $25,000 per person/$50,000 per accident, was not required to provide UIM coverage. Hollar v. Hawkins, 119 N.C. App. 795, 460 S.E.2d 337 (1995).

Under this section, a commercial excess liability insurance policy is not a "policy of bodily injury liability insurance," and thus, an excess insurer is not required to offer uninsured motorist and underinsured motorist coverage, since a "policy of bodily injury liability insurance" is a motor vehicle liability policy. Progressive Am. Ins. Co. v. Vasquez, 350 N.C. 386, 515 S.E.2d 8 (1999).

Underinsured Motorist Coverage In Absence of Selection. — Where the insured failed to make a valid selection of underinsured motorist coverage limits, such coverage was equal to the insured's liability limits of $100,000 per person and $300,000 per accident. State Farm Mut. Auto. Ins. Co. v. Fortin, 350 N.C. 264, 513 S.E.2d 782 (1999).

Settlement Agreement Did Not Bar Recovery. — Injured claimant's entry into a settlement agreement with negligent driver and his carrier did not bar claimant, as a matter of law, from recovering under both son and daughter's UIM coverage as a first class insured. North Carolina Farm Bureau Mut. Ins. Co. v. Bost, 126 N.C. App. 42, 483 S.E.2d 452 (1997).

Recovery by Non-Occupant. — Decedent who was attempting to get a vehicle covered by the defendant insurance company out of a ditch by hooking it up to another car when a third vehicle hit and killed him was covered by the defendant's UIM policy although he did not own and was not actually occupying the vehicle. Dutch v. Harleysville Mut. Ins. Co., 139 N.C. App. 602, 534 S.E.2d 262, 2000 N.C. App. LEXIS 976 (2000).

Covenant Not to Enforce Judgment. — G.S. 20-279.21(b)(4), providing that individuals injured in car accidents could execute contractual covenants not to enforce judgment in favor of the tortfeasor as consideration for the payment of the liability policy limits without precluding them from seeking any available underinsured motorist benefits, did not apply to the interpretation of a release which could not be characterized as a covenant not to enforce judgment. N.C. Farm Bureau Mut. Ins. Co. v. Edwards, 154 N.C. App. 616, 572 S.E.2d 805, 2002 N.C. App. LEXIS 1514 (2002).

Given G.S. 20-279.21(b)(4)'s reference only to covenants not to enforce judgments and not limited releases, the statute does not require that a settlement must contain a covenant to preserve an injured party's underinsured motorist claims, in order to preserve such claims. N.C. Farm Bureau Mut. Ins. Co. v. Edwards, 154 N.C. App. 616, 572 S.E.2d 805, 2002 N.C. App. LEXIS 1514 (2002).

Determination of Amount Due Plaintiff on UIM Claim. — During a N.C. R. App. P. 31 motion for rehearing, the appellate court determined that a remand to the trial court was necessary to determine the amount due to plaintiff from an insurance company on an underinsured motorist claim pursuant to G.S. 20-279.21, as the stipulation of the parties was not sufficient to determine the amount due since the stipulation did not specify the total loss incurred by plaintiff. Austin v. Midgett, 166 N.C. App. 740, 603 S.E.2d 855, 2004 N.C. App. LEXIS 2020 (2004).

Motion to Compel Arbitration of UIM Claim improperly Denied. — Trial court erred in denying an insured's motion to compel arbitration pursuant to G.S. 1-567.3 of an underinsured motorist claim pursuant to G.S. 20-279.21; the contractual period to request arbitration did not begin to run until the insured settled a liability claim with another company, and therefore the arbitration request was timely pursuant to the terms of the contract and G.S. 1-52(16). Register v. White, 160 N.C. App. 657, 587 S.E.2d 95, 2003 N.C. App. LEXIS 1933 (2003), cert. granted, 358 N.C. 155, 590 S.E.2d 862 (2003), aff'd, 358 N.C. 691, 599 S.E.2d 549 (2004).

Since a passenger's contractual right to underinsured motorist coverage was expressly conditioned on the exhaustion of the liability carrier's policy limits, which did not occur until the liability carrier tendered the limits of its policy in the passenger's action for bodily injuries following an automobile accident, accrual of the three-year time limit in the UIM policy for the passenger to demand arbitration did not run until the date the liability carrier tendered its policy limits; because the passenger's demand for arbitration was filed within three years of that date, the demand was timely and the trial court erred in holding the demand had to be filed within three years of the date of the accident, which was when the passenger's bodily injuries were apparent. Register v. White, 358 N.C. 691, 599 S.E.2d 549, 2004 N.C. LEXIS 916 (2004).

Decisions Under Prior Law. — The legislature made the level of underinsured motorist coverage a function of liability coverage, not a function of uninsured coverage. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 324 N.C. 221, 376 S.E.2d 761 (1989) (decided under prior law).

The amount of underinsured motorist coverage required by law when an insurer has not complied with subdivision (b)(4) of this section and the liability insurance policy in which the underinsured motorist coverage is required does not state the existence or the amount of such coverage is equal to the maximum liability coverage provided by the policy. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 324 N.C. 221, 376 S.E.2d 761 (1989) (decided under prior law).

§ 20-279.22. Notice of cancellation or termination of certified policy.

When an insurance carrier has certified a motor vehicle liability policy under G.S. 20-279.19 or a policy under G.S. 20-279.20, the insurance so certified shall not be canceled or terminated until at least 20 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the Commissioner, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates. (1953, c. 1300, s. 22.)

CASE NOTES

This section applies only to certified assigned risk policies issued under the Motor Vehicle Safety and Responsibility Act of 1953. Nationwide Mut. Ins. Co. v. Davis, 7 N.C. App. 152, 171 S.E.2d 601 (1970); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973).

It has no application to policies issued under the Vehicle Financial Responsibility Act of 1957. Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961); Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973).

Statutes Control Policy Provisions as to Cancellation. — The provisions of this Article and Article 13 of this Chapter, liberally construed to effectuate the legislative policy, control any provision written into a policy which otherwise would give an insurance company a greater right to cancel than is provided by the statute. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

Right of carrier to cancel policy issued under assigned risk plan is subject to the provisions of Article 13 of this Chapter as so implemented by the provisions of this Article incorporated by reference therein. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

Notice Is Required Whether Coverage Is Terminated by Insured or by Insurer. — Under the provisions of the Motor Vehicle Safety and Responsibility Act of 1953 it is incumbent upon the insurer to give the statutory notice of cancellation irrespective of whether the insurance coverage is terminated through acts of the insured or the insurer. Nationwide Mut. Ins. Co. v. Davis, 7 N.C. App. 152, 171 S.E.2d 601 (1970).

§ 20-279.23. Article not to affect other policies.

(a) This Article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Article, may be certified as proof of financial responsibility under this Article.

(b) This Article shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured. (1953, c. 1300, s. 23.)

§ 20-279.24. Bond as proof.

(a) Proof of financial responsibility may be furnished by filing with the Commissioner the bond of a surety company duly authorized to transact business in the State or a bond with at least two individual sureties each owning real estate within this State, and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond which shall be approved by the clerk of the superior court of the county wherein the real estate is situated. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy, and shall not be cancellable except after 20 days' written notice to the Commissioner. A certificate of the county tax supervisor or person performing the duties of the tax supervisor, showing the assessed valuation of each tract or parcel of real estate for tax purposes shall accompany a bond with individual sureties and, upon acceptance and approval by the Commissioner, the execution of such bond shall be proved before the clerk of the superior court of the county or counties wherein the land or any part thereof lies, and such bond shall be recorded in the office of the register of deeds of such county or counties. Such bond shall constitute a lien upon the real estate therein described from and after filing for recordation to the same extent as in the case of ordinary mortgages and shall be regarded as the equivalent of a mortgage or deed of trust. In the event of default in the terms of the bond the Commissioner may foreclose the lien thereof by making public sale upon publishing notice thereof as provided by G.S. 45-21.17; provided, that any such sale shall be subject to the provisions for upset or increased bids and resales and the procedure therefor as set out in Part 2 of Article 2A of Chapter 45 of the General Statutes. The proceeds of such sale shall be applied by the Commissioner toward the discharge of liability upon the bond, any excess to be paid over to the surety whose property was sold. The Commissioner shall have power to so sell as much of the property of either or both sureties described in the bond as shall be deemed necessary to discharge the liability under the bond, and shall not be required to apportion or prorate the liability as between sureties.

If any surety is a married person, his or her spouse shall be required to execute the bond, but only for the purpose of releasing any dower or curtesy interest in the property described in the bond, and the signing of such bond shall constitute a conveyance of dower or curtesy interest, as well as the homestead exemption of the surety, for the purpose of the bond, and the execution of the bond shall be duly acknowledged as in the case of deeds of conveyance. The Commissioner may require a certificate of title of a duly licensed attorney which shall show all liens and encumbrances with respect to each parcel of real estate described in the bond and, if any parcel of such real estate has buildings or other improvements thereon, the Commissioner may, in his discretion, require the filing with him of a policy or policies of fire and other hazard insurance, with loss clauses payable to the Commissioner as his interest may appear. All costs and expenses in connection with furnishing such bond and the registration thereof, and the certificate of title, insurance and other necessary items of expense shall be borne by the principal obligor under the bond, except that the costs of foreclosure may be paid from the proceeds of sale.

(b) If such a judgment, rendered against the principal on such bond shall not be satisfied within 60 days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the State against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. (1953, c. 1300, s. 24; 1993, c. 553, s. 10.)

§ 20-279.25. Money or securities as proof.

(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him eighty-five thousand dollars ($85,000) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of eighty-five thousand dollars ($85,000). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of this Article, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment, garnishment, or execution unless such attachment, garnishment, or execution shall arise out of a suit for damages as aforesaid. (1953, c. 1300, s. 25; 1965, c. 358, s. 1; 1967, c. 277, s. 5; 1973, c. 745, s. 5; 1979, c. 832, s. 8; 1991, c. 469, s. 8; 1999-228, s. 5.)

§ 20-279.26. Owner may give proof for others.

Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the Commissioner shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The Commissioner shall designate the restrictions imposed by this section on the face of such person's license. (1953, c. 1300, s. 26.)

§ 20-279.27. Substitution of proof.

The Commissioner shall consent to the cancellation of any bond or certificate of insurance or the Commissioner shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this Article. (1953, c. 1300, s. 27.)

§ 20-279.28. Other proof may be required.

Whenever any proof of financial responsibility filed under the provisions of this Article no longer fulfills the purposes for which required, the Commissioner shall for the purpose of this Article, require other proof as required by this Article, or whenever it appears that proof filed to cover any motor vehicle owned by a person does not cover all motor vehicles registered in the name of such person, the Commissioner shall require proof covering all such motor vehicles. The Commissioner shall suspend the license or the nonresident's operating privilege pending the filing of such other proof. (1953, c. 1300, s. 28.)

§ 20-279.29. Duration of proof; when proof may be canceled or returned.

The Commissioner shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Commissioner shall direct and the State Treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this Article as proof of financial responsibility, or the Commissioner shall waive the requirement of filing proof, in any of the following events:

(1) At any time after two years from the date such proof was required when, during the two-year period preceding the request, the Commissioner has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished; or

(2) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(3) In the event the person who has given proof surrenders his license to the Commissioner.

Provided, however, that the Commissioner shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied or in the event the person who has filed such bond or deposited such money or securities, has, within one year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Commissioner.

Whenever any person whose proof has been canceled or returned under subdivision (3) of this section applies for a license within a period of two years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such two-year period. (1953, c. 1300, s. 29.)

§ 20-279.30. Surrender of license.

Any person whose license shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this Article, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the Commissioner shall immediately return his license to the Commissioner. If any person shall fail to return to the Commissioner the license as provided herein, the Commissioner shall forthwith direct any peace officer to secure possession thereof and to return the same to the Commissioner. (1953, c. 1300, s. 30.)

§ 20-279.31. Other violations; penalties.

(a) The Commissioner shall suspend the license of a person who fails to report a reportable accident, as required by G.S. 20-166.1, until the Division receives a report and for an additional period set by the Commissioner. The additional period may not exceed 30 days.

(b) Any person who does any of the following commits a Class 1 misdemeanor:

(1) Gives information required in a report of a reportable accident, knowing or having reason to believe the information is false.

(2) Forges or without authority signs any evidence of proof of financial responsibility.

(3) Files or offers for filing any evidence of proof of financial responsibility, knowing or having reason to believe that it is forged or signed without authority.

(c) Any person willfully failing to return a license as required in G.S. 20-279.30 is guilty of a Class 3 misdemeanor.

(c1) Any person who makes a false affidavit or knowingly swears or affirms falsely to any matter under G.S. 20-279.5, 20-279.6, or 20-279.7 is guilty of a Class I felony.

(d) Any person who shall violate any provision of this Article for which no penalty is otherwise provided is guilty of a Class 2 misdemeanor. (1953, c. 1300, s. 31; 1983, c. 610, s. 2; 1993, c. 539, ss. 384, 1261; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 191, s. 7.)

CASE NOTES

Giving False Information for a Motor Vehicle Crash Report. — Trial court committed error by vacating a jury's verdict convicting a female defendant of giving false information for a motor vehicle crash report in violation of G.S. 20-279.31(b) because: (1) the female defendant "gave information" by telling an officer she was the driver of a vehicle involved in an accident; (2) it could be inferred that a male defendant was the driver of the vehicle, so it could be inferred that the female defendant knowingly gave false information; and (3) the driver's identity was a required part of a reportable accident report. State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

Cited in Lane v. Iowa Mut. Ins. Co., 258 N.C. 318, 128 S.E.2d 398 (1962).

§ 20-279.32. Exceptions.

This Article does not apply to a motor vehicle registered under G.S. 20-382 by a for-hire motor carrier. This Article does not apply to any motor vehicle owned by the State of North Carolina, nor does it apply to the operator of a vehicle owned by the State of North Carolina who becomes involved in an accident while operating the state-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the State. This Article does not apply to any motor vehicle owned by a county or municipality of the State of North Carolina, nor does it apply to the operator of a vehicle owned by a county or municipality of the State of North Carolina who becomes involved in an accident while operating such vehicle in the course of the operator's employment as an employee or officer of the county or municipality. This Article does not apply to the operator of a vehicle owned by a political subdivision, other than a county or municipality, of the State of North Carolina who becomes involved in an accident while operating such vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the subdivision providing that the Commissioner finds that the political subdivision has waived any immunity it has with respect to such accidents and has in force an insurance policy or other method of satisfying claims which may arise out of the accident. This Article does not apply to any motor vehicle owned by the federal government, nor does it apply to the operator of a motor vehicle owned by the federal government who becomes involved in an accident while operating the government-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the federal government. (1953, c. 1300, s. 32; 1955, c. 1152, s. 19; 1979, c. 667, s. 38; 1989, c. 485, s. 54; 1995 (Reg. Sess., 1996), c. 756, s. 18; 1999-330, s. 4.1.)

CASE NOTES

Coverage Available to Sheriff's Deputy. — County's policy controlled the underinsured motorist coverage available to a deputy sheriff as the North Carolina Motor Vehicle Safety and Financial Responsibility Act, G.S. 20-279.1, did not apply due to G.S. 20-279.32. N.C. Counties Liab. & Prop. Joint Risk Mgmt. Agency v. Curry, 191 N.C. App. 217, 662 S.E.2d 678, 2008 N.C. App. LEXIS 1225 (2008).

Applied in Watson v. American Nat'l Fire Ins. Co., 333 N.C. 338, 425 S.E.2d 696 (1993); Great American Ins. Co. v. Freeman, — N.C. App. —, 665 S.E.2d 536, 2008 N.C. App. LEXIS 1612 (2008).

Cited in Hand v. Connecticut Indemnity Co., 124 N.C. App. 774, 478 S.E.2d 661 (1996).

§ 20-279.32A. Exception of school bus drivers.

The provisions of this Article shall not apply to school bus drivers with respect to accidents or collisions in which they are involved while operating school buses in the course of their employment. (1955, c. 1282.)

§ 20-279.33. Self-insurers.

(a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section. For the purpose of this Article, the State of North Carolina shall be considered a self-insurer.

(b) The Commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (1953, c. 1300, s. 33.)

CASE NOTES

Applied in North Carolina Farm Bureau Mut. Ins. Co. v. Knudsen, 109 N.C. App. 114, 426 S.E.2d 88 (1993).

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

§ 20-279.33A. Religious organizations; self-insurance.

(a) Notwithstanding any other provision of this Article or Article 13 of this Chapter, any recognized religious organization having established tenets or teachings and that has been in existence at all times since December 31, 1950, may qualify as a self-insurer by obtaining a certificate of self-insurance from the Commissioner as provided in subsection (c) of this section if the Commissioner determines that all of the following conditions are met:

(1) Members of the religious organization operate five or more vehicles that are registered in this State and are either owned or leased by them.
(2) Members of the religious organization hold a common belief in mutual financial assistance in time of need to the extent that they share in financial obligations of other members who would otherwise be unable to meet their obligations.
(3) The religious organization has met all of its insurance obligations for the five years preceding its application.
(4) The religious organization is financially solvent and not subject to any actions in bankruptcy, trusteeship, receivership, or any other court proceeding in which the financial solvency of the religious organization is in question.
(5) Neither the religious organization nor any of its participating members has any judgments arising out of the operation, maintenance, or use of a motor vehicle taken against them that have remained unsatisfied for more than 30 days after becoming final.
(6) There are no other factors that cause the Commissioner to believe that the religious organization and its participating members are not of sufficient financial ability to pay judgments against them.
(7) The religious organization and its participating members meet other requirements that the Commissioner by administrative rule prescribes.

(b) The Commissioner may, in the Commissioner's discretion, upon the application of a religious organization, issue a certificate of self-insurance when the Commissioner is satisfied that the religious organization is possessed and will continue to be possessed of an ability to pay any judgments that might be rendered against the religious organization. The certificate shall serve as evidence of insurance for the purposes of G.S. 20-7(c1), 20-13.2(e), 20-16.1, 20-19(k), and 20-179.3(l).

(c) A group issued a certificate of self-insurance under this section shall notify the Commissioner in writing if any person ceases to be a member of the group. The group shall notify the Commissioner within 10 days of the person's removal or departure from the group.

(d) The Commissioner may, at any time after the issuance of a certificate of self-insurance under this subsection, cancel the certificate by giving 30 days' written notice of cancellation to the religious organization whenever there is reason to believe that the religious organization to whom the certificate was issued is no longer qualified as a self-insurer under this section. (2006-145, s. 5.)

§ **20-279.34:** Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 27.

§ 20-279.35. Supplemental to motor vehicle laws; repeal of laws in conflict.

This Article shall in no respect be considered as a repeal of any of the motor vehicle laws of this State but shall be construed as supplemental thereto.

The "Motor Vehicle Safety and Responsibility Act" enacted by the 1947 Session of the General Assembly, being Chapter 1006 of the Session Laws of 1947 (G.S. 20-224 to 20-279), is hereby repealed except with respect to any accident or violation of the motor vehicle laws of this State occurring prior to January 1, 1954, or with respect to any judgment arising from such accident or violation, and as to such accidents, violations or judgments Chapter 1006 of the

Session Laws of 1947 shall remain in full force and effect. Except as herein stated, all laws and clauses of laws in conflict with this Article are hereby repealed. (1953, c. 1300, s. 35.)

CASE NOTES

Applied in Miller v. New Amsterdam Cas. Co., 245 N.C. 526, 96 S.E.2d 860 (1957).

Cited in Graham v. Iowa Nat'l Mut. Ins. Co., 240 N.C. 458, 82 S.E.2d 381 (1954); Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

§ 20-279.36. Past application of Article.

This Article shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this State, occurring prior to January 1, 1954. (1953, c. 1300, s. 37.)

CASE NOTES

Applied in Justice v. Scheidt, 252 N.C. 361, 113 S.E.2d 709 (1960).

Cited in Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

§ 20-279.37. Article not to prevent other process.

Nothing in this Article shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (1953, c. 1300, s. 38.)

§ 20-279.38. Uniformity of interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. (1953, c. 1300, s. 39.)

§ 20-279.39. Title of Article.

This Article may be cited as the "Motor Vehicle Safety-Responsibility Act of 1953." (1953, c. 1300, s. 41.)

CASE NOTES

Cited in North Carolina Farm Bureau Mut. Ins. Co. v. Warren, 326 N.C. 444, 390 S.E.2d 138 (1990); Great American Ins. Co. v. Freeman, — N.C. App. —, 665 S.E.2d 536, 2008 N.C. App. LEXIS 1612 (2008).

ARTICLE 10.

Financial Responsibility of Taxicab Operators.

§ 20-280. Filing proof of financial responsibility with governing board of municipality or county.

(a) Within 30 days after March 27, 1951, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined.

No governing board of a municipality shall hereafter issue any certificate of convenience and necessity, franchise, license, permit or other privilege or authority to any person, firm or corporation authorizing such person, firm or corporation to engage in the business of operating a taxicab or taxicabs within the municipality unless such person, firm or corporation first files with said governing board proof of financial responsibility as hereinafter defined.

Within 30 days after the ratification of this section, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities, shall file with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

No person, firm or corporation shall hereafter engage in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities in any county unless such person, firm or corporation first files with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

(b) As used in this section "proof of financial responsibility" shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident.

(c) Every person, firm or corporation who engages in the taxicab business and who is a member of or participates in any trust fund or sinking fund, which said trust fund or sinking fund is for the sole purpose of paying claims, damages or judgments against persons, firms or corporations engaging in the taxicab business and which trust fund or sinking fund is approved by the governing body of any city or municipality with a population of over 50,000, shall be deemed a compliance with the financial responsibility provisions of this section.

Provided, however, that in the case of operators of 15 or more taxicabs, the limits (exclusive of interests and costs), with respect to each such motor vehicle shall be as follows: twenty thousand dollars ($20,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars ($40,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. (1951, c. 406; 1965, c. 350, s. 1; 1967, c. 277, s. 7; 1973, c. 745, s. 6; 1979, c. 832, ss. 9, 10; 1991, c. 469, s. 5; 1999-228, s. 6.)

Local Modification. — Durham: 1953, c. 597.

Legal Periodicals. — For brief comment on this section, see 29 N.C.L. Rev. 402 (1951).

CASE NOTES

Cited in Perrell v. Beaty Serv. Co., 248 N.C. 153, 102 S.E.2d 785 (1958).

ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.

From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident, and sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this Article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for. (1953, c. 1017, s. 1; 1955, c. 1296; 1965, c. 349, s. 1; 1967, c. 277, s. 8; 1973, c. 745, s. 7; 1979, c. 832, s. 11; 1991, c. 469, s. 6; 1999-228, s. 7.)

Cross References. — As to registration fees for U-Drive-It passenger vehicles, see G.S. 20-87(2).

CASE NOTES

Coverage Requirement Is Reasonable. — The requirement of this section that policies which insure automobile lessors provide coverage for lessees and their agents is reasonable in light of the statute's purpose. A lessor's insurance should cover lessees because lessees are unlikely to purchase insurance on account of what may be the temporary nature of a rental arrangement. A lessor's insurance also should cover lessees' agents because, being mere agents, they are also unlikely to obtain their own insurance. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

The public policy expressed in this section is that even where automobile rental agreements are violated it is preferable to provide coverage for innocent motorists rather than to deny such coverage because of the violation. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

This section and § 20-279.21 prescribe mandatory terms which become part of every liability policy insuring automobile lessors. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Section Is in Addition to § 20-279.21. — This section is a source of mandatory terms for automobile liability insurance policies in addition to and independent of G.S. 20-279.21. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

This section, which applies specifically to automobile owners who lease their cars for profit, is a companion section to and supplements G.S. 20-279.21, which applies to automobile owners generally. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

This section supplements G.S. 20-279.21 and is intended to protect innocent drivers from financially irresponsible drivers. Hertz Corp. v. New S. Ins. Co., 129 N.C. App. 227, 497 S.E.2d 448 (1998).

This Section and § 20-279.21 Compared. — This section requires those engaged in the business of renting automobiles to the public to maintain liability insurance "insuring the owner and rentee . . . and their agents" against liability for damages for personal injury or death in the minimum amount of $25,000 per person and $50,000 per accident and for property damage in the amount of $10,000.00, while G.S. 20-279.21, which applies more generally to every policy insuring any automobile owner whether or not that owner leases vehicles, requires that the coverage be extended to "any other persons in lawful possession" of the vehicle. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

A liability policy issued to one in the business of renting cars must comply with both § 20-279.21 and this section and provide all coverages required by both sections. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Section Provides Coverage to Lessees and Their Agents. — In every automobile liability policy insuring automobile lessors, this section provides coverage to lessees and lessees' agents. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986), holding that if 19 year old was an agent of her father, the lessee, this section required that she be covered, even though she did not have lessors' permission to use the car.

Amount of Coverage. — When an automobile insurance policy providing coverage in amounts in excess of that statutorily required contains substantive coverages less than those statutorily required, the insurer's liability for an accident for which the statute requires but the policy does not provide coverage is limited to the minimum amount of coverage required by statutes. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Coverage, to the extent that it exceeded that required by this section, was "voluntary." Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Extension of Coverage Until Relationship Is Terminated. — The legislature intended that coverage under this section should be extended until such times as there has been a clear termination of the relationship of lessor-lessee. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Breach or Default by Lessee. — An insurer who issues a policy to satisfy the requirements of this section is not relieved from its duty to provide coverage for a lessee upon a mere breach of an automobile lease agreement, or even upon a default in its terms. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Conversion by Lessee. — Where individual's continued possession of automobile, after bank had given him notice that he was in default and demanded possession of the automobile, was adverse to the rights of bank as owner and lessor and amounted to a conversion of the automobile, the relationship of lessor-lessee ceased to exist. Therefore such individual was not operating the automobile as banks lessee at the time of collision some 12 months thereafter, and bank's insurer was not required by this section to extend coverage for personal injuries caused by defendant's operation of the automobile. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

This section did not extend insurance coverage to the driver of a rented vehicle where there was neither evidence nor a finding that the driver at any time was a rentee or a lessee or an agent or employee of the owner of the vehicle. Iowa Nat'l Mut. Ins. Co. v. Broughton, 283 N.C. 309, 196 S.E.2d 243 (1973).

In view of lessee's default and the efforts of the lessor to repossess the automobile, no lessor-lessee relationship existed at the time of collision involving the lessee, nor did the lessee have express or implied permission to operate the vehicle, and the policy insuring the lessor afforded no coverage under this section. Nationwide Mut. Ins. Co. v. Land, 318 N.C. 551, 350 S.E.2d 500 (1986).

Third Party Held in Lawful Possession of Rental Car. — Although lessee violated his contract by permitting third parties to drive rental car, their possession of it was not unlawful. Thus, driver was in "lawful possession" of the car at the time of the accident, although he had neither express nor implied permission from the lessor to drive it, and therefore insurer was required, pursuant to G.S. 20-279.21(b)(2) and this section, to provide coverage for driver's negligent operation of the automobile, limited to the amounts of coverage required by G.S. 20-279.21(g) and this section. Insurance Co. of N. Am. v. Aetna Life & Cas. Co., 88 N.C. App. 236, 362 S.E.2d 836 (1987).

Rental Company Without Liability. — Where driver had an operative liability insurance policy meeting the requirements of the Financial Responsibility Act, and where car rental company specifically excluded liability insurance in the lease agreement, car rental company owed driver no liability coverage. Jeffreys v. Snappy Car Rental, Inc., 128 N.C. App. 171, 493 S.E.2d 767 (1997).

Liability Coverage For Vehicle Lessee Not Excluded. — Lessor's fleet insurance policy did not exclude liability coverage for lessee, even though the lessee was insured under his own liability policy at the minimum limits, where the lessee was a person "required by law to be an insured" within the meaning of the fleet policy. Integon Indem. Corp. v. Universal Underwriters Ins. Co., 131 N.C. App. 267, 507 S.E.2d 66 (1998).

Applied in American Tours, Inc. v. Liberty Mut. Ins. Co., 68 N.C. App. 668, 316 S.E.2d 105 (1984).

Cited in Travelers Ins. Co. v. Ryder Truck Rental, Inc., 34 N.C. App. 379, 238 S.E.2d 193 (1977); Engle v. State Farm Mut. Auto. Ins. Co., 37 N.C. App. 126, 245 S.E.2d 532 (1978); Belasco v. Nationwide Mut. Ins. Co., 73 N.C. App. 413, 326 S.E.2d 109 (1985).

§ 20-282. Cooperation in enforcement of Article.

The provisions of this Article shall be enforced by the Commissioner of Motor Vehicles in cooperation with the Commissioner of Insurance, the North Carolina Automobile Rate Administrative Office and with all law-enforcement officers and agents and other agencies of the State and the political subdivisions thereof. (1953, c. 1017, s. 2.)

§ 20-283. Compliance with Article prerequisite to issuance of license plates.

No license plates shall be issued by the Division of Motor Vehicles to operate a motor vehicle, for lease or rent for operation by the rentee or lessee, until the applicant for such license plates demonstrates to the Commissioner of Motor Vehicles that he has complied with the provisions of this Article. (1953, c. 1017, s. 3; 1975, c. 716, s. 5.)

§ 20-284. Violation a misdemeanor.

Any person, firm or corporation violating the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1953, c. 1017, s. 4; 1993, c. 539, s. 385; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-285. Regulation of motor vehicle distribution in public interest.

The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate and license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina, in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this State. (1955, c. 1243, s. 1; 1983, c. 704, s. 1.)

Legal Periodicals. — For 1984 survey on commercial law, "Green Light to Territorial Security for Automobile Dealers," see 63 N.C.L. Rev. 1080 (1985).

CASE NOTES

Cited in Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978).

§ 20-286. Definitions.

The following definitions apply in this Article:

(1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.

(2a) Dealership facilities. — The real estate, buildings, fixtures and improvements devoted to the conduct of business under a franchise.

(2b) Designated family member. — The spouse, child, grandchild, parent, brother, or sister of a dealer, who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who under the laws of intestate succession of this State is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

(3) Distributor. — A person, resident or nonresident of this State, who sells or distributes new motor vehicles to new motor vehicle dealers in this State, maintains a distributor representative in this State, controls any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to any motor vehicle dealer in this State.

(4) Distributor branch. — A branch office maintained by a distributor for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the distributor's representatives in this State.

(5) Distributor representative. — A person employed by a distributor or a distributor branch for the purpose of selling or promoting the sale of new motor vehicles or otherwise conducting the business of the distributor or distributor branch.

(5a) Established office. — An office that meets the following requirements:

a. Contains at least 96 square feet of floor space in a permanent enclosed building.

b. Is a place where the books, records, and files required by the Division under this Article are kept.

(6) Established salesroom. — A salesroom that meets the following requirements:

a. Contains at least 96 square feet of floor space in a permanent enclosed building.

b. Displays, or is located immediately adjacent to, a sign having block letters not less than three inches in height on contrasting background, clearly and distinctly designating the trade name of the business.

c. Is a place at which a permanent business of bartering, trading, and selling motor vehicles will be carried on in good faith on an ongoing basis whereby the dealer can be contacted by the public at reasonable times.

d. Is a place where the books, records, and files required by the Division under this Article are kept.

The term includes the area contiguous to or located within 500 feet of the premises on which the salesroom is located. The term does not include a tent, a temporary stand, or other temporary quarters. The minimum area requirement does not apply to any place of business lawfully in existence and duly licensed on or before January 1, 1978.

(7) Factory branch. — A branch office, maintained for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the factory branch's representatives in this State.

(8) Factory representative. — A person employed by a manufacturer or a factory branch for the purpose of selling or promoting the sale of the manufacturer's motor vehicles or otherwise conducting the business of the manufacturer or factory branch.

(8a) Franchise. — A written agreement or contract between any new motor vehicle manufacturer, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.

(8b) Franchised motor vehicle dealer. — A dealer who holds a currently valid franchise as defined in G.S. 20-286(8a) with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

(8c) Good faith. — Honesty in fact and the observation of reasonable commercial standards of fair dealing as defined and interpreted in G.S. 25-1-201(b)(20).

(8d) Independent motor vehicle dealer. — A dealer in used motor vehicles.

(8e) Manufacturer. — A person, resident or nonresident, who manufactures or assembles new motor vehicles, or who imports new motor vehicles for distribution through a distributor, including any person who acts for and is under the control of the manufacturer or assembler in connection with the distribution of the motor vehicles. Additionally, the term "manufacturer" shall include the terms "distributor" and "factory branch."

(9) Repealed by Session Laws 1973, c. 1330, s. 39.

(10) Motor vehicle. — Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle that has never been the subject of a completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above.

(11) Motor vehicle dealer or dealer. —

a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

3. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor

vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.

4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.
5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

b. The term "motor vehicle dealer" or "dealer" does not include any of the following:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
2. Public officers while performing their official duties.
3. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.
4. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance, and auctioneers who sell motor vehicles for the owners or the heirs of the owners of those vehicles as part of an auction of other personal or real property or for the purpose of settling an estate or closing a business or who sell motor vehicles on behalf of a governmental entity, and who do not maintain a used car lot or building with one or more employed motor vehicle sales representatives.
5. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 2,500 pounds unloaded weight.
6. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.
7. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.
8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.
9. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.
10. Any real property owner who leases any interest in property for use by a dealer.
11. Any person acquiring any interest in a motor vehicle for a family member.
12. Any auctioneer licensed pursuant to Chapter 85B of the General Statutes employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer.

(12) Motor vehicle sales representative or salesman. — A person who is employed as a sales representative by, or has an agreement with, a motor vehicle dealer or a wholesaler to sell or exchange motor vehicles.

(13) New motor vehicle dealer. — A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.

(13a) Person. — Defined in G.S. 20-4.01.

(13b) Relevant market area or trade area. — The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:

a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or

b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or

c. Except as defined in subparts a. and b., the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from Claritas Inc. or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area. In accumulating population for this definition, block group and block level data shall be used to apportion the population of census tracts which are only partially within the relevant market area so that population outside of the applicable radius is not included in the count.

(14) Repealed by Session Laws 1973, c. 1330, s. 39.

(15) Retail installment sale. — A sale of one or more motor vehicles to a buyer for the buyer's use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated as a conditional sale, bailment lease, chattel mortgage or otherwise.

(16) Used motor vehicle dealer. — A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.

(17) Wholesaler. — A person who sells or distributes used motor vehicles to motor vehicle dealers in this State, has a sales representative in this State, or controls any person who in whole or in part offers for sale, sells, or distributes any used motor vehicle to a motor vehicle dealer in this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that apply to distributors also apply to wholesalers. (1955, c. 1243, s. 2; 1967, c. 1126, s. 1; c. 1173; 1973, c. 1330, s. 39; 1977, c. 560, s. 1; 1983, c. 312; c. 704, ss. 2, 3, 21; 1987, c. 381; 1991, c. 527, s. 1; c. 662, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 23; 1993, c. 331, s. 1; 1995, c. 234, s. 1; 1997-456. s. 27; 2003-254, s. 1; 2003-265, s. 1; 2005-409, s. 7; 2007-484, s. 6.)

Cross References. — For definitions applicable throughout this Chapter, see G.S. 20-4.01.

Editor's Note. — The subdivisions of subsection (11) were renumbered pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Legal Periodicals. — For 1984 survey on commercial law, "Green Light to Territorial Security for Automobile Dealers," see 63 N.C.L. Rev. 1080 (1985).

CASE NOTES

Negative equity and gap insurance do not come within the definition of "purchase money obligation," and thus cannot give rise to a purchase money security interest. Wells Fargo Fin. N.C. 1, Inc. v. Price, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 97420 (E.D.N.C. Nov. 14, 2007).

"Good Faith" Required by § 20-305(6) Defined by This Section. — Manufacturer's withdrawal from the heavy duty truck market was in good faith as required by G.S. 20-305(6). Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Evidence of Good Faith Held Sufficient. — Where manufacturer gave dealer at least a year's notice concerning the likelihood of cancellation, manufacturer treated dealer no differently than it did any of its other heavy-duty truck franchisees, and, more importantly, where there was no evidence of dishonesty by manufacturer, the record was replete with evidence of manufacturer's good faith in cancelling its heavy-duty truck franchises with dealer. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Relevant Market Area or Trade Area. — The intent of the legislature was to exclude population outside the designated radius, and the Commissioner of the Division of Motor Vehicles erred by including population lying outside the designated radius when determining "relevant market area," though that population was within a census tract partially within that area. Al Smith Buick Co. v. Mazda Motor of Am., Inc., 122 N.C. App. 429, 470 S.E.2d 552, 1996 N.C. App. 455 (1996), cert. denied, 473 S.E.2d 609 (1996).

Cited in Star Auto. Co. v. Jaguar Cars, Inc., 95 N.C. App. 103, 382 S.E.2d 226 (1989); Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992).

§ 20-287. Licenses required; penalties.

(a) License Required. — It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of the dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom.

(b) Civil Penalty for Violations by Licensee. — In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect a civil penalty, in an amount not to exceed one thousand dollars ($1,000) for each violation, against any person who has obtained a license pursuant to this section, if it finds that the licensee has violated any of the provisions of G.S. 20-285 through G.S. 20-303, Article 15 of this Chapter, or any statute or rule adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration.

(c) Civil Penalty for Violations by Person Without a License. — In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect a civil penalty, in an amount not to exceed five thousand dollars ($5,000) for each violation, against any person who is required to obtain a license under this section and has not obtained the license, if it finds that the person has violated any of the provisions of G.S. 20-285 through G.S. 20- 303, Article 15 of this Chapter, or any statute or rule adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration. (1955, c. 1243, s. 3; 1991, c. 662, s. 2; 2001-345, s. 1; 2005-99, s. 1.)

Editor's Note. — The preamble to Session Laws 2001-345 reads as follows: "Whereas, not only the setting of standards to protect purchasers of motor vehicles but also the enforcement of substantial penalties applicable when those standards are not met is one of the most effective means to obtain this protection; and

"Whereas, more complex laws governing regulation of the sale and distribution of motor vehicles such as the titling of a vehicle, warranties, collection of consumer debt pursuant to Federal Trade Commission regulations, and applicable tax provisions impose a greater number of duties upon independent automobile dealers; and

"Whereas, the most effective and consistent means of informing both applicants for licensure and experienced, licensed motor vehicle dealers of major changes and increasing complexities in the law is to develop a program insuring the development and requirement of appropriate continuing education; Now, therefore."

§ 20-288. Application for license; license requirements; expiration of license; bond.

(a) A new motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

(1) The required fee.

(2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) and operates from an established showroom one mile or less from the established showroom for which the applicant seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision.

(3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.

(4) The application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall be for a period of one year unless sooner revoked or suspended. The Division shall vary the expiration dates of all licenses that are granted so that an equal number of licenses expire at the end of each month, quarter, or other period consisting of one or more months to coincide with G.S. 20-79(c).

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of more than 2,500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of more than 2,500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is fifty thousand dollars ($50,000) for one established salesroom of the applicant and twenty-five thousand dollars ($25,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is fifty thousand dollars ($50,000) for one place of business of the applicant and twenty-five thousand dollars ($25,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle, including a motor vehicle dealer, who shall have suffered any loss or damage by the failure of any license holder subject to this subsection to deliver free and clear title to any vehicle purchased from a license holder or any other act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 of this Chapter shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. Except as provided by G.S. 20-288(f) and (g), a corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. That cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12.

(f) A corporate surety bond furnished pursuant to this section or renewal thereof may also be canceled by the surety prior to the next premium anniversary date without the prior written consent of the license holder for the following reasons:

(1) Nonpayment of premium in accordance with the terms for issuance of the surety bond; or

(2) An act or omission by the license holder or his representative that constitutes substantial and material misrepresentation or nondisclosure of a material fact in obtaining the surety bond or renewing the bond.

Any cancellation permitted by this subsection is not effective unless written notice of cancellation has been delivered or mailed to the license holder and to the Commissioner not less than 30 days before the proposed effective date of cancellation. The notice must be given or mailed by certified mail to the license holder at its last known address. The notice must state the reason for cancellation. Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation. Cancellation of the surety shall not affect any liability incurred or accrued prior to the termination of the 30-day notice period.

(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. Nonrenewal of the surety bond shall not affect any liability incurred or accrued prior to the premium anniversary date of the surety bond. (1955, c. 1243, s. 4; 1975, c. 716, s. 5; 1977, c. 560, s. 2; 1979, c. 254; 1981, c. 952, s. 3; 1985, c. 262; 1991, c. 495, s. 1; c. 662, s. 3; 1993, c. 440, s. 3; 1997-429, s. 1; 2001-345, s. 2; 2001-492, s. 4; 2003-254, s. 2; 2004-167, s. 9; 2004-199, s. 59; 2005-99, s. 2; 2006-105, s. 2.3; 2006-191, s. 1; 2006-259, s. 12.)

Editor's Note. — The preamble to Session Laws 2001-345 reads: "Whereas, not only the setting of standards to protect purchasers of motor vehicles but also the enforcement of substantial penalties applicable when those standards are not met is one of the most effective means to obtain this protection; and

"Whereas, more complex laws governing regulation of the sale and distribution of motor vehicles such as the titling of a vehicle, warranties, collection of consumer debt pursuant to Federal Trade Commission regulations, and applicable tax provisions impose a greater number of duties upon independent automobile dealers; and

"Whereas, the most effective and consistent means of informing both applicants for licensure and experienced, licensed motor vehicle dealers of major changes and increasing complexities in the law is to develop a program insuring the development and requirement of appropriate continuing education; Now, therefore."

Legal Periodicals. — For survey on consumer law, see 70 N.C.L. Rev. 1959 (1992).

CASE NOTES

Constitutionality. — Subsection (e) is not unconstitutional in that it unreasonably restricts plaintiff's right to engage in his occupation of manufacturing trailers, since the complexities surrounding the sale, dealer servicing, warranties, financing, titling and registration of motor vehicles makes their distribution a business which easily could be conducted so as to become a medium of fraud and dishonesty; the State's power to regulate such a business includes the right to require a bond or security for the faithful performance of the obligations incident to the business. Hence, the regulation complained of in this case is based upon reasonable grounds, it is not arbitrary, and is therefore a proper exercise of the State's police power. Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283, appeal dismissed, 303 N.C. 543, 281 S.E.2d 391 (1981).

The exemption of manufacturers and dealers of trailers of less than 4,000 pounds empty weight from the bonding requirement of this section does not deny equal protection of the law, since, under North Carolina law, trailers weighing less than 4,000 pounds are exempt from brake requirements, directional signals, lighting requirements, and clearance lamps; smaller trailers cost less, are of simpler construction, and involve warranty problems of less magnitude; and the difference in treatment between trailers over 4,000 pounds and trailers less than 4,000 pounds therefore has a reasonable basis in relation to the purpose of statute in question. Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283, appeal dismissed, 303 N.C. 543, 281 S.E.2d 391 (1981).

The two hurdles to recovery that need to be overcome within subsection (e) are 1) the dealer's violation of either Article 12 or Article 15 of this Chapter, and 2) the suffering of damages and losses by the consumer. Tomlinson v. Camel City Motors, Inc., 330 N.C. 76, 408 S.E.2d 853 (1991).

Section 20-294(4) Does Not Enlarge Coverage of Subsection (e). — Section 20-294(4) only sets out grounds for which the State may suspend or revoke a license. It does not enlarge the coverage of subsection (e) of this section to any parties other than a purchaser. Triplett v. James, 45 N.C. App. 96, 262 S.E.2d 374, cert. denied, 300 N.C. 202, 269 S.E.2d 621 (1980).

Subsection (e) of this section grants only to purchasers the right to recover on the bond, and the fact that, under G.S. 20-294(4), a dealer may lose his license for defrauding any person in the conduct of his business does not mean that the bond specifically required by subsection (e) and specifically limited by that section as a source of indemnity to purchasers only is available as a remedy to any defrauded party. Triplett v. James, 45 N.C. App. 96, 262 S.E.2d 374, cert. denied, 300 N.C. 202, 269 S.E.2d 621 (1980).

The practice of fraud by an automobile dealer upon a purchaser is a violation of Article 12 of this Chapter for purposes of subsection (e). Tomlinson v. Camel City Motors, Inc., 330 N.C. 76, 408 S.E.2d 853 (1991).

Only purchasers of motor vehicles may recover under a motor vehicle surety bond. Fink v. Stallings 601 Sales, Inc., 64 N.C. App. 604, 307 S.E.2d 829 (1983).

Seller as Purchaser. — Although plaintiff had already contracted to resell vehicle that turned out to be stolen prior to its purchase, he qualified as an aggrieved purchaser and was entitled to recover under surety bond. Perkins v. Helms, 133 N.C. App. 620, 515 S.E.2d 906 (1999).

Joint Venturer Not Eligible to Recover on Bond. — Although plaintiff's testimony indicated that he tendered money to defendant and received title to a cadillac in return, the relationship of the parties was primarily that of joint venturers rather than seller-purchaser; whereby the two engaged in a short-term business deal for joint profit, with contributions of effort from each and risk taken by each, and as a joint venturer, plaintiff was not a purchaser under the ordinary meaning of the word and therefore could not recover on the bond secured to comply with this section. Taylor v. Johnson, 84 N.C. App. 116, 351 S.E.2d 831 (1987).

Scope of Cause of Action Against Surety. — North Carolina's motor vehicle dealer suretyship statute provides a cause of action against both the dealer and surety to "[a]ny purchaser" of a motor vehicle who suffers loss or damage as a result of a dealer's violation of the state's odometer law. Consistent with the plain language of the statute, North Carolina courts have refused relief to injured parties who did not "purchase" an illegally altered vehicle. Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992).

The statute creates a cause of action in favor of "any purchaser," which includes in-state and out-of-state purchasers. Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992).

Accrual of Cause of Action Against Surety. — Causes of action of truck purchaser against dealer and against dealer's surety under a motor vehicle dealer surety bond both arose when purchaser discovered dealer's breach of contract or fraud, and could be no later than the date on which purchaser filed a complaint against the dealer in the superior court. And as nothing prevented purchaser from joining both defendants in one action or from instituting a separate action against surety while the case against dealer was pending, the three-year statute of limitations of G.S. 1-52(1) was not tolled. Bernard v. Ohio Cas. Ins. Co., 79 N.C. App. 306, 339 S.E.2d 20 (1986).

A plaintiff's cause of action against a surety begins to run when the fraud is discovered. Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992).

The cause of action against a surety under a motor vehicle dealer surety bond arises at the time that the cause of action arises against the surety's principal. Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992).

Fact that surety did not appeal from underlying judgment against car dealer did not mean that the surety should pay the entire award. At the time that the default judgment was entered against dealer, its principal, the surety could raise only defenses concerning the substance of the claims. The surety was entitled thereafter to assert this section in its own defense to buyer's claim. Tomlinson v.

Camel City Motors, Inc., 330 N.C. 76, 408 S.E.2d 853 (1991).

Surety Not Liable for Treble Damages. — Where dealer did not pay buyer's monthly car payments as required by agreement, the total of the unpaid payments was the amount "suffered" by the plaintiff; she did not "suffer" further compensatory damages. Thus under this section the surety was not liable for the trebled portion of damages imposed under G.S. 75-16. Tomlinson v. Camel City Motors, Inc., 330 N.C. 76, 408 S.E.2d 853 (1991).

The purchaser of an automobile is entitled to recover against a surety only to the extent of "loss or damage" actually "suffered" as a result of the fraudulent conduct by the surety's principal. The purchaser is not entitled to recover punitive treble damages. Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992).

Bank Subrogated to Rights of Purchasers. — Bank, which after dealer sold used vehicles with unpaid first liens in which it had a security interest to eight customers, entered into agreements with each of the customers providing that it would pay off the prior liens and that in return the customers would assign their claims against dealer and surety to it, pursuant to which agreements it extinguished all prior liens on the encumbered vehicles so that the customers received title to their vehicles reflecting bank as first lienholder, was subrogated to all the claims of the customers against defendant surety, and thus had a right to sue the dealer on the bonds issued by defendant surety. NCNB Nat'l Bank v. Western Sur. Co., 88 N.C. App. 705, 364 S.E.2d 675 (1988).

Where a subrogee obtained a default judgment that subrogated the subrogee to the rights of a purchaser, the subrogee could sue on a surety bond issued pursuant to G.S. 20-288(e) and a surety could not collaterally attack the judgment; summary judgment in favor of the subrogee was proper. Reg'l Acceptance Corp. v. Old Republic Sur. Co., 156 N.C. App. 680, 577 S.E.2d 391, 2003 N.C. App. LEXIS 233 (2003).

Surety Held Liable on Bonds. — Under the facts, defendant's act of selling used automobiles with outstanding liens was in violation of this Article, thereby invoking the liability of the surety to pay on the bonds issued to plaintiff bank as assignee of the rights, claims and title of car purchasers. NCNB Nat'l Bank v. Western Sur. Co., 88 N.C. App. 705, 364 S.E.2d 675 (1988).

Total Amount of Bond Recovery. — Bond purchased in the middle of the first year entitled recovery of $25,000 for each of the three license years during which it was effective, not an aggregate total of $25,000 for the three years. Perkins v. Helms, 133 N.C. App. 620, 515 S.E.2d 906 (1999).

Applied in Tomlinson v. Camel City Motors, Inc., 101 N.C. App. 419, 399 S.E.2d 147 (1991); Nixon v. Alan Vester Auto Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 10870 (M.D.N.C. Feb. 12, 2009).

Cited in Randolph County v. Coen, 99 N.C. App. 746, 394 S.E.2d 256 (1990); George v. Hartford Accident & Indem. Co., 330 N.C. 755, 412 S.E.2d 43 (1992).

§ 20-289. License fees.

(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, seventy dollars ($70.00) for each place of business.

(2) For manufacturers, one hundred fifty dollars ($150.00) and for each factory branch in this State, one hundred dollars ($100.00).

(3) For motor vehicle sales representatives, fifteen dollars ($15.00).

(4) For factory representatives, or distributor representatives, fifteen dollars ($15.00).

(5) Repealed by Session Laws 1991, c. 662, s. 4.

(b) The fees collected under this section shall be credited to the Highway Fund. These fees are in addition to all other taxes and fees. (1955, c. 1243, s. 5; 1969, c. 593; 1977, c. 802, s. 8; 1981, c. 690, s. 16; 1991, c. 662, s. 4; c. 689, s. 335; 2005-276, s. 44.1(o).)

§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.

(a) The license of a motor vehicle dealer shall list each of the dealer's established salesrooms in this State. A license of a manufacturer, factory branch, distributor, distributor branch, or wholesaler shall list each of the license holder's places of business in this State. A license shall be conspicuously displayed at each place of business. In the event the location of a business changes, the Division shall endorse the change of location on the license, without charge.

(b) Each dealer shall keep a current list of his licensed salesmen, showing the name of each licensed salesman, posted in a conspicuous place in each place of business.

(c) Whenever any licensee places an advertisement in any newspaper or publication, the licensee's name shall appear in the advertisement. (1955, c. 1243, s. 6; 1975, c. 716, s. 5; 1991, c. 662, s. 5; 2005-99, s. 3.)

§ 20-291. Representatives to carry license and display it on request; license to name employer.

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ten dollars ($10.00). (1955, c. 1243, s. 7; 1975, c. 716, s. 5; 1991, c. 662, s. 6; c. 689, s. 336; 2005-99, s. 4; 2005-276, s. 44.1(r).)

§ 20-292. Dealers may display motor vehicles for sale at retail only at established salesrooms.

A new or used motor vehicle dealer may display a motor vehicle for sale at retail only at the dealer's established salesroom, unless the display is of a motor vehicle that meets any of the following descriptions:

(1) Contains the dealer's name or other sales information and is used by the dealer as a "demonstrator" for transportation purposes.

(2) Is displayed at a trade show or exhibit at which no selling activities relating to the vehicle take place.

(3) Is displayed at the home or place of business of a customer at the request of the customer.

This section does not apply to recreational vehicles, house trailers, or boat, animal, camping, or other utility trailers. (1955, c. 1243, s. 8; 1991, c. 662, s. 7.)

§ 20-292.1. Supplemental temporary license for sale of antique and specialty vehicles.

Any dealer licensed as a motor vehicle dealer under this Article may apply to the Commissioner and receive, at no additional charge, a supplemental temporary license authorizing the off-premises sales of antique motor vehicles and specialty motor vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary supplemental license for the off-premises sale of antique motor vehicles and specialty motor vehicles, the applicant shall:

(1) Be licensed as a motor vehicle dealer under this Article.

(2) Notify the applicable local office of the Division of the specific dates and location for which the license is requested.

(3) Display a sign at the licensed location clearly identifying the dealer.

(4) Keep and maintain the records required for the sale of motor vehicles under this Article.

(5) Provide staff to work at the temporary location for the duration of the off-premises sale.

(6) Meet any local government permitting requirements.

(7) Have written permission from the property owner to sell at the location.

For purposes of this section, the term "antique motor vehicle" shall mean any motor vehicle for private use manufactured at least 25 years prior to the current model year, and the term "specialty motor vehicle" shall mean any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of which no more than 5,000 vehicles were sold within the United States during the model year the vehicle was manufactured.

This section does not apply to a nonselling motor vehicle show or public display of new motor vehicles. (2003-113, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 2003-113, s. 1, as G.S. 20-293. It was renumbered as G.S. 20-292.1 at the direction of the Revisor of Statutes.

§ 20-293: Repealed by Session Laws 1993, c. 440, s. 10.

§ 20-294. Grounds for denying, suspending or revoking licenses.

The Division may deny, suspend, or revoke a license issued under this Article for any one or more of the following grounds:

(1) Making a material misstatement in an application for a license.

(2) Willfully and intentionally failing to comply with this Article, Article 15 of this Chapter, or G.S. 20-52.1, 20-75, 20-79.1, 20-108, 20-109, or a rule adopted by the Division under this Article.

(3) Failing to have an established salesroom, if the license holder is a motor vehicle dealer, or failing to have an established office, if the license holder is a wholesaler.

(4) Willfully defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business.

(5) Employing fraudulent devices, methods or practices in connection with compliance with the requirements under the laws of this State with respect to the retaking of motor vehicles under retail installment contracts and the redemption and resale of such motor vehicles.

(6) Using unfair methods of competition or unfair deceptive acts or practices.

(7) Knowingly advertising by any means, any assertion, representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the business licensed or for which a license is sought.

(8) Knowingly advertising a used motor vehicle for sale as a new motor vehicle.

(9) Being convicted of an offense set forth under G.S. 20-106, 20-106.1, 20-107, or 20-112 while holding such a license or within five years next preceding the date of filing the application; or being convicted of a felony involving moral turpitude under the laws of this State, another state, or the United States.

(10) Submitting a bad check to the Division of Motor Vehicles in payment of highway use taxes collected by the licensee.

(11) Knowingly giving an incorrect certificate of title, or failing to give a certificate of title to a purchaser, a lienholder, or the Division, as appropriate, after a vehicle is sold.

(12) Making a material misstatement in an application for a dealer license plate.

(13) Failure to pay a civil penalty imposed under G.S. 20-287. (1955, c. 1243, s. 10; 1963, c. 1102; 1967, c. 1126, s. 2; 1975, c. 716, s. 5; 1977, c. 560, s. 3; 1983, c. 704, s. 4; 1985, c. 687; ss. 1, 2; 1991, c. 193, s. 2; 1993, c. 440, s. 11; 2001-345, ss. 3, 4.)

Editor's Note. — The preamble of Session Laws 2001-345, reads: "Whereas, not only the setting of standards to protect purchasers of motor vehicles but also the enforcement of substantial penalties applicable when those standards are not met is one of the most effective means to obtain this protection; and

"Whereas, more complex laws governing regulation of the sale and distribution of motor vehicles such as the titling of a vehicle, warranties, collection of consumer debt pursuant to Federal Trade Commission regulations, and applicable tax provisions impose a greater number of duties upon independent automobile dealers; and

"Whereas, the most effective and consistent means of informing both applicants for licensure and experienced, licensed motor vehicle dealers of major changes and increasing complexities in the law is to develop a program insuring the development and requirement of appropriate continuing education; Now, therefore."

CASE NOTES

Subdivision (4) Does Not Enlarge Coverage of § 20-288(e). — Subsection (4) of this section only sets out grounds for which the State may suspend or revoke a license. It does not enlarge the coverage of G.S. 20-288(e) to any parties other than a purchaser. Triplett v. James, 45 N.C. App. 96, 262 S.E.2d 374, cert. denied, 300 N.C. 202, 269 S.E.2d 621 (1980).

Section 20-288(e) grants only to purchasers the right to recover on the bond, and the fact that, under subdivision (4) of this section, a dealer may lose his license for defrauding any person in the conduct of his business does not mean that the bond specifically required by G.S. 20-288(e) and specifically limited by that section as a source of indemnity to purchasers only is available as a remedy to any defrauded party. Triplett v. James, 45 N.C. App. 96, 262 S.E.2d 374, cert. denied, 300 N.C. 202, 269 S.E.2d 621 (1980).

Dealer's Fraudulent Inducement. — Where dealer induced plaintiff to purchase a car by telling her that the dealer would make the remaining installment payments on the old car if the purchaser would trade it in with the dealer for another car, and these promised payments were not made, this fraudulent inducement by the dealer violated this section. Tomlinson v. Camel City Motors, Inc., 330 N.C. 76, 408 S.E.2d 853 (1991).

Moral Turpitude. — Contrary to plaintiff's contention, the term "moral turpitude" is deeply rooted in American Law. The Supreme Court has defined crimes involving moral turpitude as acts of baseness, vileness, or depravity in the private and social duties that man owes to his fellowman or to society in general. Dew v. State ex rel. N.C. DMV, 127 N.C. App. 309, 488 S.E.2d 836 (1997).

Moral Turpitude Shown. — The Court of Appeals held that as a matter of law the felony of conspiracy to possess with intent to distribute marijuana is a crime involving moral turpitude. Dew v. State ex rel. N.C. DMV, 127 N.C. App. 309, 488 S.E.2d 836 (1997).

Applied in Nixon v. Alan Vester Auto Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 10870 (M.D.N.C. Feb. 12, 2009).

Cited in NCNB Nat'l Bank v. Western Sur. Co., 88 N.C. App. 705, 364 S.E.2d 675 (1988).

OPINIONS OF ATTORNEY GENERAL

Price Prohibited by Subdivision (6). — Subdivision (6) of the section prohibits a licensed motor vehicle dealer from advertising, publishing, or representing a price which does not include all charges which constitute the total price to the retail customer, except the North Carolina sales tax. Opinion of Attorney General to Mr. Gonzalie Rivers, License and Theft Division, Department of Motor Vehicles, 43 N.C.A.G. 135 (1973).

§ 20-295. Action on application.

The Division shall either grant or deny an application for a license within 30 days after receiving it. Any applicant denied a license shall, upon filing a written request within 30 days, be given a hearing at the time and place determined by the Commissioner or a person designated by the Commissioner.

A hearing shall be public and shall be held with reasonable promptness. (1955, c. 1243, s. 11; 1975, c. 716, s. 5; 1993, c. 440, s. 1.)

§ 20-296. Notice and hearing upon denial, suspension, revocation or refusal to renew license.

No license shall be suspended or revoked or denied, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least 10 days' written notice of the time and place of such hearing shall be given to the licensee by certified mail with return receipt requested to his last known address as shown on his license or other record of information in possession of the Division. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Division shall have power to suspend, revoke or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in the manner herein provided in the case of notices of hearing. (1955, c. 1243, s. 12; 1975, c. 716, s. 5; 1981, c. 108.)

§ 20-297. Retention and inspection of certain records.

(a) Vehicles. — A dealer must keep a record of all vehicles received by the dealer and all vehicles sold by the dealer. The records must contain the information that the Division requires. A dealer may keep and maintain records at the dealership facility where the vehicles were sold or at another established office located within this State provided that the location and the name of a designated contact agent are provided to the Division and the records can be made available for inspection by the Division within a reasonable period of time after being requested by the Division.

(b) Inspection. — The Division may inspect the pertinent books, records, letters, and contracts of a licensee relating to any written complaint made to the Division against the licensee. (1955, c. 1243, s. 13; 1975, c. 716, s. 5; 1995, c. 163, s. 5; 2007-481, s. 3.)

§ 20-297.1. Franchise-related form agreements.

(a) All franchise-related form agreements, as defined in this subsection, offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. For purposes of this section, the term "franchise-related form agreements" means one or more contracts between a franchised motor vehicle dealer and a manufacturer, factory branch, distributor, or distributor branch, including a written communication from a manufacturer or distributor in which a duty is imposed on the franchised motor vehicle dealer under which:

(1) The franchised motor vehicle dealer is granted the right to sell and service new motor vehicles manufactured or distributed by the manufacturer or distributor or only to service motor vehicles under the contract and a manufacturer's warranty;

(2) The franchised motor vehicle dealer is a component of the manufacturer or distributor's distribution system as an independent business;

(3) The franchised motor vehicle dealer is substantially associated with the manufacturer or distributor's trademark, trade name, and commercial symbol;

(4) The franchised motor vehicle dealer's business substantially relies on the manufacturer or distributor for a continued supply of motor vehicles, parts, and accessories; or

(5) Any right, duty, or obligation granted or imposed by this Chapter is affected.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to offer to a dealer, revise, modify, or replace a franchise-related form agreement, as defined above in this section, which agreement, modification, or replacement may adversely affect or alter the rights, obligations, or liability of a motor vehicle dealer or may adversely impair the sales, service obligations, investment, or profitability of any motor vehicle dealer located in this State, unless:

(1) The manufacturer, factory branch, distributor, or distributor branch provides prior written notice by registered or certified mail to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, Inc., of the modification or replacement in the form and within the time frame set forth within this section and in subsection (c) of this section; and

(2) If a protest is filed under this section, the Commissioner approves the modification or replacement.

(c) The notice required by subdivision (b)(1) of this section shall:

(1) Be given not later than the 60th day before the effective date of the modification or replacement;

(2) Contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE COMMISSIONER OF THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED INITIAL OFFERING, MODIFICATION, OR REPLACEMENT OF CERTAIN FRANCHISE-RELATED FORM AGREEMENTS UNDER THE TERMS OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, IF YOU OPPOSE THIS ACTION"; and

(3) Contain a separate letter or statement that identifies all substantive modifications or revisions and the principal reasons for each such modification or revision.

(d) A franchised dealer may file a protest with the Commissioner of the offering, modification, or replacement pursuant to this section not later than the latter of:

(1) The 60th day after the date of the receipt of the notice; or

(2) The time specified in the notice.

(e) After a protest is filed, the Commissioner shall determine whether the manufacturer, factory branch, distributor, or distributor branch has established by a preponderance of the evidence that there is good cause for the proposed offering, modification, or replacement. The prior franchise-related form agreement, if any, continues in effect until the Commissioner resolves the protest.

(f) The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any franchise-related form agreement with the provisions of this Article.

(g) Nothing contained in this section shall in any way limit a dealer's rights under any other provision of this Article or other applicable law. (1997-319, s. 1; 2005-409, s. 1.)

§ 20-298. Insurance.

It shall be unlawful for any dealer or salesman or any employee of any dealer, to coerce or offer anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on said motor vehicle. No dealer, salesman or representative of either shall accept any policy as collateral on any vehicle sold by him to secure an interest in such vehicle in any company not qualified under the insurance laws of this State: Provided, nothing in this Article shall prevent a dealer or his representative from requiring adequate insurance coverage on a motor vehicle which is the subject of an installment sale. (1955, c. 1243, s. 14.)

§ 20-299. Acts of officers, directors, partners, salesmen and other representatives.

(a) If a licensee is a copartnership or a corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or partner of the copartnership or corporation has committed any act or omitted any duty which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent.

(b) Every licensee who is a manufacturer or a factory branch shall be responsible for the acts of any or all of its agents and representatives while acting in the conduct of said licensee's business whether or not such licensee approved, authorized, or had knowledge of such acts. (1955, c. 1243, s. 15; 1973, c. 559.)

§ 20-300. Appeals from actions of Commissioner.

Appeals from actions of the Commissioner shall be governed by the provisions of Chapter 150B of the General Statutes. (1955, c. 1243, s. 16; 1973, c. 1331, s. 3; 1987, c. 827, s. 1.)

CASE NOTES

Review of a decision by the Commissioner of Motor Vehicles is governed by G.S. 150A-51 (see now G.S. 150B-51). GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

The standard of review for the court of appeals of a decision by the Commissioner of Motor Vehicles is governed by G.S. 150A-51 (recodified as G.S. 150B-51). Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Applied in Smith's Cycles, Inc. v. Alexander, 27 N.C. App. 382, 219 S.E.2d 282 (1975).

Cited in State ex rel. N.C. Utils. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965); Star Auto. Co. v. Jaguar Cars, Inc., 95 N.C. App. 103, 382 S.E.2d 226 (1989).

§ 20-301. Powers of Commissioner.

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other remedy, bring an action in the name of the State against that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin any persons from continuing the violations.

(e) The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section.

(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the manufacturer through an appeals board or internal grievance procedure of the manufacturer, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the manufacturer, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the manufacturer's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the manufacturer has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the manufacturer before seeking redress from the Commissioner as provided in this Article. (1955, c. 1243, s. 17; 1983, c. 704, s. 23; 1991, c. 510, s. 1; 1997-319, s. 2; 1999-335, s. 1.)

CASE NOTES

Granting franchise in violation of § 20-305(5) would be an unfair act or practice, which the Commissioner is empowered to prevent under this section. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Power to Forestall Franchise Termination. — Neither this section nor G.S. 20-305(6) expressly vests the Commissioner with the power to order parties to enter into a contract. However, the statutory prohibition on franchise termination except for cause remains intact. Thus it is not necessary that the Commissioner have the power to order parties to enter into contracts to enable the agency to function properly. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Commissioner's order finding that GMC failed to renew dealer's franchise agreements without cause and directing that the agreements not be terminated was proper. However, the Commissioner exceeded his authority in ordering GMC to enter "a regular five (5) year motor vehicle dealer sales agreement" with dealer. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Applied in American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

Cited in Sandhill Motors, Inc. v. American Motors Sales Corp., 667 F.2d 1112 (4th Cir. 1981).

§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, prior written notice is required for the following charges or debits: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement, or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy

of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.

(5) In this subsection, "mediation" means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

(7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a 50/50 basis. The Commissioner is not liable for the compensation paid or to be paid a mediator employed pursuant to this subsection.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence. (2001-510, s. 1.)

§ 20-302. Rules and regulations.

The Commissioner may make such rules and regulations, not inconsistent with the provisions of this Article, as he shall deem necessary or proper for the effective administration and enforcement of this Article, provided that a copy of such rules and regulations shall be mailed to each motor vehicle dealer licensee 30 days prior to the effective date of such rules and regulations. (1955, c. 1243, s. 18.)

CASE NOTES

Cited in Murray v. Justice, 96 N.C. App. 169, 385 S.E.2d 195 (1989).

§ 20-303. Installment sales to be evidenced by written instrument; statement to be delivered to buyer.

(a) Every retail installment sale shall be evidenced by one or more instruments in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) For every retail installment sale, prior to or about the time of the delivery of the motor vehicle, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected. The written statement shall be signed by the buyer. (1955, c. 1243, s. 19; 2007-513, s. 1.)

Editor's Note. — Session Laws 2007-513, s. 13, provides: "This act shall be applicable to all franchises and other contracts and agreements existing between motor vehicle dealers, on the one part, and manufacturers, factory branches, distributors, and distributor branches, on the other part, at the time of its ratification, and to all future franchises, contracts, and other agreements."

Session Laws 2007-513, s. 14, is a severability clause.

Session Laws 2007-513, s. 15, provides in part: "Nothing in this act applies to any administrative proceeding pending before the Commissioner of Motor Vehicles or any case pending in a court on or before the effective date of this act."

Effect of Amendments. — Session Laws 2007-513, s. 1, effective August 30, 2007, in subsection (a), substituted "one or more instruments" for "an instrument"; and, in subsection (b), at the beginning of the first sentence, inserted "For every retail installment sale," and added the last sentence. For applicability, see Editor's notes.

CASE NOTES

Description of Amount Owed. — Automobile dealership was granted summary judgment on a truck purchaser's G.S. 20-303 claim where there was no evidence that the description of the amount the purchaser owed was inaccurate. Comer v. Pers. Auto Sales, Inc., 368 F. Supp. 2d 478, 2005 U.S. Dist. LEXIS 6992 (M.D.N.C. 2005).

§ 20-304. Coercion of retail dealer by manufacturer or distributor in connection with installment sales contract prohibited.

(a) It shall be unlawful for any manufacturer, wholesaler or distributor, or any officer, agent or representative of either, to coerce, or attempt to coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this State to sell, assign or transfer any retail installment sales contract, obtained by such dealer in connection with the sale by him in this State of motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor, to a specified finance company or class of such companies, or to any other specified persons, by any of the acts or means hereinafter set forth, namely:

(1) By any statement, suggestion, promise or threat that such manufacturer, wholesaler, or distributor will in any manner benefit or injure such dealer, whether such statement, suggestion, threat or promise is expressed or implied, or made directly or indirectly,

(2) By any act that will benefit or injure such dealer,

(3) By any contract, or any expressed or implied offer of contract, made directly or indirectly to such dealer, for handling motor vehicles, on the condition that such dealer sell, assign or transfer his retail installment sales contract thereon, in this State, to a specified finance company or class of such companies, or to any other specified person,

(4) By any expressed or implied statement or representation, made directly or indirectly, that such dealer is under any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this State, on motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor to such finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer, wholesaler, or distributor and such finance company or companies or such other specified person or persons.

(b) Any such statements, threats, promises, acts, contracts, or offers of contracts, when the effect thereof may be to lessen or eliminate competition, or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and against the public policy of this State, are unlawful and are hereby prohibited. (1955, c. 1243, s. 20.)

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by that dealer, or to accept delivery of any motor vehicle or vehicles which have been equipped in a manner other than as specified by the dealer.

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) **(See Editor's note for applicability)** Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership and the proposed transferee notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. The notice of objection shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment, relocation, or change that is specifically referenced in this subdivision. An objection to a proposed transfer, sale, assignment, relocation, or change in the executive management or principal operator of the dealership may only be premised upon the factual and legal bases specifically refer-

enced in this subdivision. A manufacturer's notice of objection which is based upon factual or legal issues that are not specifically referenced in this subdivision as being issues upon which the Commissioner shall base his determination shall not be effective to preserve the franchisor's right to object to the proposed transfer sale, assignment, relocation, or change, provided the dealership or proposed transferee has submitted written notice, as required above, as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in the executive management or as principal operators, and the location and site plans of any proposed relocation. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. If the franchisor requires additional information to complete its review, the franchisor shall notify the dealership within 15 days after receipt of the proposed transferee's name and address, financial ability, and qualifications, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. If the franchisor fails to request additional information from the dealer or proposed transferee within 15 days of receipt of this initial information, the 30-day time period within which the franchisor may provide notice of objection shall be deemed to run from the initial receipt date. Otherwise, the 30-day time period within which the franchisor may provide notice of objection shall run from the date the franchisor has received the supplemental information requested from the dealer or proposed transferee; provided, however, that failure by the franchisor to send notice of objection within 60 days of the franchisor's receipt of the initial information from the dealer shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof before the Commissioner under this subdivision. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. The opinion or determination of a franchisor that the continued existence of one of its franchised dealers situated in this State is not viable, or that the dealer holds or fails to hold licensing rights for the sale of other line-makes of vehicles in a manner consistent with the franchisor's existing or future distribution or marketing plans, shall not constitute a lawful basis for the franchisor to fail or refuse to approve a dealer's proposed relocation: provided, however, that nothing contained in this subdivision shall be deemed to prevent or prohibit a franchisor from failing to approve a dealer's proposed relocation on grounds that the specific site or facility proposed by the dealer is otherwise unreasonable under the circumstances. Approval of a relocation pursuant to this subdivision shall not in itself constitute the franchisor's representation or assurance of the dealer's viability at that location.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish

or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:
   1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section.
   2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years.
   3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation.
   4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
   5. Repealed by Session Laws 2008-156, s. 3, effective August 3, 2008.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
   1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
   2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
   3. Effect on the consuming public in the relevant market area;
   4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
   5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
   6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
   7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section. If the Commissioner fails to determine that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the manufacturer seeking the proposed additional dealership or dealer seeking to relocate may not again provide notice of its intention or otherwise attempt to establish an additional dealership or relocate to any location within 10 miles of the site of the original proposed additional dealership or relocation site for a minimum of three years from the date of the Commissioner's determination.

g. **(See Editor's note for applicability)** For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a

petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this paragraph, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise

relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and
   - I. The notification stated that notice was provided of failure of performance pursuant to this section;
   - II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
   - III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. —

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
   - I. In the manner described in G.S. 20-305(6)c2 below; and
   - II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
   - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
     - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
     - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
     - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
     - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
   - IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or

other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments.

1. Notwithstanding the terms of any franchise, agreement, or waiver, upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer for all of the following:

I. Each new and unsold motor vehicle within the new motor vehicle dealer's inventory that has been acquired within 24 months of the effective date of the termination from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged to the prejudice of the manufacturer or distributor while in the new motor vehicle dealer's possession, and which has been driven less than 1,000 miles or, for purposes of a recreational vehicle motor home as defined in G.S. 20-4.01(32a)a., less than 1,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued. For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer or distributor or sources approved by the manufacturer or distributor, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition.

III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources.

IV. Special tools that have not been altered or damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.

2. The compensation provided above shall be paid by the manufacturer or distributor not later than 90 days after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has, or can obtain, clear title to the inventory and has conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the repurchase obligations of the manufacturer or distributor under this sub-subparagraph. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor

charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.

3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due not later than 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, the new motor vehicle dealer specifying the elements of compensation requested by the dealer. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal.

In the event of the occurrence of any of the events specified in G.S. 20-305(6)d.1. above, except termination, cancellation or nonrenewal for license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years, or for one year in the case of motorcycle dealerships.
3. In order to be entitled to facilities assistance from the manufacturer or distributor, as provided in this paragraph e., the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by listing the demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with

said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this paragraph e. shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.

4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer or distributor is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service operations from this location during the same three-year period.
5. The compensation required for facilities assistance under this paragraph e. shall be paid by the manufacturer or distributor within 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle dealer specifying the elements of compensation requested by the dealer.

f. The provisions of sub-subdivision e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement by a new motor vehicle dealer is the result of the sale of assets or stock of the motor vehicle dealership. The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement is at the initiation of a new motor vehicle dealer of recreational vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided that at the time of the termination, nonrenewal, or cancellation, the recreational vehicle manufacturer or distributor has paid to the dealer all claims for warranty or recall work, including payments for labor, parts, and other expenses, which were submitted by the dealer 30 days or more prior to the date of termination, nonrenewal, or cancellation.

g. A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement shall be deemed to be a change of an established plan or system of distribution.

Upon the occurrence of the change, the Division shall deny an application of a manufacturer, factory branch, distributor, or distributor branch for a license or license renewal unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the Division acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated successor to succeed in the respective ownership interest or interest as principal operator of the owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner or principal operator. In order for succession to the position of principal operator to occur by operation of law in accordance with sub-subdivision c. below, the owner's choice of a successor must be approved by the dealer, in accordance with the dealer's bylaws, if applicable, either prior or subsequent to the death or incapacity of the existing principal operator.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor

is a person who is not of good moral character or does not meet the franchisor's existing written and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from an owner of the identity of the owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
6. In the event death or incapacity of the owner or principal operator occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's or principal operator's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner or principal operator of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the rights and obligations of the owner or principal operator in the new motor vehicle dealership and under either the existing franchise or any other successor, renewal, or replacement franchise.

d. Within 60 days after the death or incapacity of the owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the position of owner or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was fraudulent.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's or principal operator's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's or principal operator's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of those motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to purchase nondiagnostic computer equipment or programs, to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform

charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's market area as determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to

deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. Except as may be required by any consent decree of the Commissioner or other order of the Commissioner or court of competent jurisdiction, each manufacturer shall allocate its products in a manner that provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model to achieve the manufacturer's minimum sales requirements, planning volume, or sales objectives and that is fair and equitable to all of its franchised dealers in this State. Additionally, each manufacturer shall make available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer advertises nationally as being available for purchase. A manufacturer shall not unfairly discriminate among its franchised dealers in this allocation process. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above, or to prevent or attempt to prevent, through the exercise of any contractual right of first refusal or otherwise, a dealer located in this State from transferring the franchised business to such persons or other entities as the dealer shall designate in accordance with G.S. 20-305(4). The opinion or determination of a manufacturer that the existence or location of one of its franchised dealers situated in this State is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans shall not constitute a lawful basis for the manufacturer to fail or refuse to approve a dealer's proposed transfer of ownership submitted in accordance with G.S. 20-305(4), or "good cause" for the termination, cancellation, or nonrenewal of the franchise under G.S. 20-305(6) or grounds for the objection to an owner's designated successor appointed pursuant to G.S. 20-305(7).

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to

the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading or conceal any material facts which induce any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of current model year new motor vehicles which are covered by the franchise agreement, provided that such inventory representation requirements are not unreasonable under the circumstances.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new

motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
    1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
    2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
    1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
    2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
    3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, 2014.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, 2014.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles.

(33) To fail to reimburse a dealer located in this State in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the manufacturer.

(34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in any training program whose subject matter is not expressly limited to specific information neces-

sary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that manufacturer. Examples of training programs with respect to which a manufacturer is prohibited from requiring the dealer's monetary participation include, but are not limited to, those which purport to teach morale-boosting employee motivation, teamwork, or general principles of customer relations. A manufacturer is further prohibited from requiring the personal attendance of an owner or dealer principal of any dealership located in this State at any meeting or training program at which it is reasonably possible for another member of the dealer's management to attend and later relate the subject matter of the meeting or training program to the dealership's owners or principal operator.

(35) Notwithstanding the terms of any franchise, agreement, waiver or novation, to limit the number of franchises of the same line make of vehicle that any franchised motor vehicle dealer, including its parent(s), subsidiaries, and affiliates, if any, may own or operate or attach any restrictions or conditions on the ownership or operation of multiple franchises of the same line make of motor vehicle without making the same limitations, conditions, and restrictions applicable to all of its other franchisees.

(36) With regard to any manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof that owns and operates a new motor vehicle dealership, directly or indirectly through any subsidiary or affiliated entity as provided in G.S. 20-305.2, to unreasonably discriminate against any other new motor vehicle dealer in the same line make in any matter governed by the motor vehicle franchise, including the sale or allocation of vehicles or other manufacturer or distributor products, or the execution of dealer programs for benefits.

(37) Subdivisions (11) and (25) of this section shall not apply to any manufacturer, manufacturer branch, distributor, distributor branch, or any affiliate or subsidiary thereof of new motor vehicles which manufactures or distributes exclusively new motor vehicles with a gross weight rating of 8,500 pounds or more, provided that the following conditions are met: (i) the manufacturer has, as of November 1, 1996, an agreement in effect with at least three of its franchised dealers within the State, and which agreement was, in fact, being enforced by the manufacturer, requiring the dealers to maintain separate and exclusive facilities for the vehicles it manufactures or distributes; and (ii) there existed at least seven dealerships (locations) of that manufacturer within the State as of January 1, 1999.

(38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market and without having provided the affected dealer with written notice of the change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner,

the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect.

(40) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including any financial source or sources that is or are directly or indirectly owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch.

(41) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to use or consider the performance of any of its franchised new motor vehicle dealers located in this State relating to the sale of the manufacturer's new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of the manufacturer's new motor vehicles in determining:

a. The dealer's eligibility to purchase program, certified, or other used motor vehicles from the manufacturer;

b. The volume, type, or model of program, certified, or other used motor vehicles the dealer shall be eligible to purchase from the manufacturer;

c. The price or prices of any program, certified, or other used motor vehicles that the dealer shall be eligible to purchase from the manufacturer; or

d. The availability or amount of any discount, credit, rebate, or sales incentive the dealer shall be eligible to receive from the manufacturer for the purchase of any program, certified, or other used motor vehicles offered for sale by the manufacturer.

(42) Notwithstanding the terms, provisions, or conditions of any agreement or waiver, to directly or indirectly condition the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer,

or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this subdivision, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either: (i) requiring that the dealer establish or maintain exclusive dealership facilities; or (ii) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of the parties to such agreement. Any provision contained in any agreement entered into on or after August 26, 2009, that is inconsistent with the provisions of this subdivision shall be voidable at the election of the affected dealer, prospective dealer, or owner of an interest in the dealership facility. (1955, c. 1243, s. 21; 1973, c. 88, ss. 1, 2; 1983, c. 704, ss. 5-10; 1987, c. 827, s. 1; 1991, c. 510, ss. 2-4; 1993, c. 123, s. 1; c. 331, s. 2; 1995, c. 163, s. 13; c. 480, s. 3; 1997-319, s. 3; 1999-335, s. 2; 1999-336, s. 1; 2001-510, ss. 2, 6; 2003-113, ss. 2, 3, 4; 2005-409, s. 2; 2005-463, s. 2; 2007-513, ss. 2-4, 9, 12; 2008-156, s. 3; 2008-187, s. 50; 2009-338, ss. 1, 2, 5; 2009-496, s. 1.)

Cross References. — As to application of subdivisions (4) through (28) of this section, see G.S. 20-305.5.

Editor's Note. — Subdivision (3) of this section was repealed by Session Laws 1973, c. 88. However, s. 4 of the 1973 act provides: "The provisions of this act shall not apply to manufacturers of, or dealers in, mobile or manufactured type housing or recreational trailers." In view of s. 4, subdivision (3) has not been deleted from the section as set out above.

Session Laws 1997-319, s. 5, provides that the amendment adding subdivision (5)g. of this section shall not apply to satellite facilities licensed before July 1, 1997.

Session Laws 2007-513, s. 13, provides: "This act shall be applicable to all franchises and other contracts and agreements existing between motor vehicle dealers, on the one part, and manufacturers, factory branches, distributors, and distributor branches, on the other part, at the time of its ratification, and to all future franchises, contracts, and other agreements."

Session Laws 2007-513, s. 14, is a severability clause.

Session Laws 2007-513, s. 15, provides in part: "Nothing in this act applies to any administrative proceeding pending before the Commissioner of Motor Vehicles or any case pending in a court on or before the effective date of this act."

Session Law 2008-187, s. 50, provides that it is contingent upon Senate Bill 1800, 2007 Regular Session, becoming law. Senate Bill 1800 was enacted as Session Laws 2008-156.

Session Laws 2009-338, s. 6, provides: "The terms and provisions of this act shall be applicable to all franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act, and to all future franchises and other agreements."

Session Laws 2009-338, s. 7 contains a severability clause.

Session Laws 2009-496, s. 3, provides: "The terms and provisions of this act shall be applicable to all franchises and other agreements entered into on or after the effective date of this act [August 26, 2009] between any new motor vehicle dealer located in this State and a manufacturer or distributor.

Session Laws 2009-496, s. 4 is a severability clause.

Effect of Amendments. — Session Laws 2007-513, ss. 2-4, 9, and 12, effective August 30, 2007, rewrote subdivisions (4) and (6); in subdivision (7)c, substituted "either the existing franchise or any other successor, renewal, or replacement franchise" for "the existing franchise"; in subdivision (18), substituted "grounds for the objection to" for "for the rejection of" and deleted the former last sentence which read "No manufacturer shall owe any duty to any actual or potential purchaser of a motor vehicle franchise located in this State to disclose to such actual or potential purchaser its own opinion or determination that the franchise being sold or otherwise transferred is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans"; and added subdivision (41). For applicability, see Editor's notes.

Session Laws 2008-156, s. 3, effective August 3, 2008, deleted subdivision (5)a.5. regarding the distance required between motor vehicle dealers selling the same line make.

Session Laws 2008-187, s. 50, effective August 7, 2008, made minor stylistice changes in (5)a. See the Editor's note.

Session Laws 2009-338, ss. 1, 2, and 5, effective July 24, 2009, in subdivision (6), rewrote subdivision (6)d. in subdivision (6)e., inserted "or distributor" throughout the subdivision, substituted "occurrence of any of the events specified in G.S. 20-305(6)d.1. above" for "termination, cancellation or nonrenewal by the manufacturer or distributor under this section" and deleted "insolvency" following "nonrenewal for" in the introductory language; in subdivision (6)e.5, substituted "after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle dealer specifying the elements of compensation requested by the dealer" for "of the effective date of termination, cancellation, or nonrenewal"; rewrote subdivision (6)f.; in subdivision (28), in the last sentence, inserted "current model year" near the middle, and added "provided that such inventory representation requirements are not unreasonable under the circumstances" at the end; and, in subdivision (30), substituted "June 30, 2014" for "June 30, 2010" at the end of the fifth and sixth paragraphs.

Session Laws 2009-496, s. 1, effective August 26, 2009, added subdivision (42). For applicability, see Editor's note.

Legal Periodicals. — For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

For comment on the Business Opportunity Sales Act of 1977, see 17 Wake Forest L. Rev. 623 (1981).

For article discussing unfair methods of competition, deceptive trade practices, and unfair trade practices, see 5 Campbell L. Rev. 119 (1982).

For survey of 1982 law on commercial law, see 61 N.C.L. Rev. 1018 (1983).

For 1984 survey on commercial law, "Green Light to Territorial Security for Automobile Dealers," see 63 N.C.L. Rev. 1080 (1985).

CASE NOTES

The notice provision contemplates an analysis of relevant market conditions within the trade area at or about the time that the notice of the new dealership is made, not the distant past or future. Smith's Cycles, Inc. v. Alexander, 27 N.C. App. 382, 219 S.E.2d 282 (1975).

Subdivision (5) is not unconstitutional on its face as allowing monopolies. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

While subdivision (5) of this section prohibiting additional franchises amounts to a restraint of trade, the restraint of intra-band trade contemplated by the statute is not such as to amount to the creation of a monopoly. More than a mere adverse effect on competition must arise before a restraint of trade becomes monopolistic. American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

Amendment Not Impairment of Right to Contract. — The amendment to this section, which provided a procedure by which an automobile dealer could seek administrative review of its franchisor's refusal to approve a relocation, was a patently reasonable exercise of the State's police power and was not an unconstitutional impairment of the parties' right to contract. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Legislative Intent. — The legislature did not intend that a franchise agreement could be cancelled for "good cause" only when the dealer did some affirmative act which would give the manufacturer "good cause" to cancel the franchise. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

The legislature would not enact a statute prohibiting a manufacturer from cancelling a franchise agreement if it decided to stop manufacturing that product because it was unprofitable. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

The legislature does not require a manufacturer to continue on a road to certain bankruptcy by requiring the manufacturer to continue to make and sell unprofitable models of cars or trucks. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Exclusive Dealership in Trade Area Is Permissible. — Under subdivision (5) of this section, an automobile manufacturer may give a dealer the exclusive right to sell its automobiles in a trade area without violating N.C. Const., Art. I, § 34. For the General Assembly to require the manufacturer to do what it could bargain to do if it desired to execute a contract is not the granting of a monopoly. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Franchise Is Not Agreement Not to Compete. — The grant of a franchise to an automobile dealer is not an agreement between competitors not to compete, but a contract between a manufacturer and a dealer. The State has enacted legislation which gives automobile dealers some protection after they have made investments and taken other action, relying on contracts they have made. The State has the power to do this. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

State Can Require That Franchise Be Exclusive if Dealer Abides by Terms. — The State can require that if an automobile manufacturer gives a franchise to a dealer to sell automobiles, that the manufacturer include in the terms of the franchise agreement the right that the dealer have an exclusive franchise in a certain trade area so long as the dealer abides by the terms of the franchise agreement. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Granting franchise in violation of subdivision (5) would be an unfair act or practice, which the Commissioner is empowered to prevent under G.S. 20-301. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Notification by Registered or Certified Mail. — The General Assembly intended for the phrase registered or certified mail, return receipt requested to refer exclusively to the delivery service offered by the U.S. Mail and not to notice delivered by any private delivery service. Nissan Div. of Nissan Motor Corp. in United States v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

Delivery by Federal Express, with return receipt, was held to be registered mail within the meaning of this section. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Since the language of this section requires that notice be sent through registered or certified mail, return receipt requested and provides that failure to do so shall constitute waiver, car manufacturer waived any objection to dealer's proposed relocation by sending its notice by Federal Express. Nissan Div. of Nissan Motor Corp. in United States v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

Verbal Notice Does Not Comply with Subdivision (5). — Subdivision (5) of this section requires that written notice be given to a franchisee before a new franchise may be granted. Verbal notice does not comply with the statute. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Further Notice Under Subdivision (5) Required. — Where a motorcycle manufacturer gave plaintiff dealer notice under subdivision (5) of this section of its intention to grant a new motorcycle franchise in plaintiff's trade area on or before Sept. 1, 1973, but the manufacturer did not grant such a franchise by that date, the failure of plaintiff to request a hearing by the Commissioner of Motor Vehicles within 30 days after receipt of such notice did not give the manufacturer the right to grant a new franchise at any time in the future without giving plaintiff further notice under subdivision (5); and where the manufacturer granted a new franchise on Oct. 14, 1974, without giving additional notice to plaintiff, the 30-day time limitation never began to run, and plaintiff properly filed its petition for a hearing on Oct. 19, 1974. Smith's Cycles, Inc. v. Alexander, 27 N.C. App. 382, 219 S.E.2d 282 (1975).

Dealer's Performance Does Not Affect Right to Seek to Prohibit Other Franchises. — The fact that an automobile dealer may not have been as competent in business as it could have been does not show he had engaged in any sharp practice or inequitable conduct which would give rise to a holding that he had unclean hands in a proceeding to prohibit establishment of additional franchises. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Appeal from Injunction Against New Franchise. — Where the Commissioner has enjoined the granting of additional franchises in a certain area, a court's refusal to stay this order is appealable, where it affects substantial rights and will work an injury to the petitioners if not corrected before an appeal from the final judgment. American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

Cancellation of Franchise When Product Discontinued. — Subdivision (6)c.1.IV of this section implies that a manufacturer may cancel a franchise if discontinuing the sale of the product line. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Cancellation of a franchise if discontinuing a product line is a "good cause" under the statute. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

"Good Faith" Defined. — Manufacturer's withdrawal from the heavy duty truck market was in good faith as required by subdivision (6) of this section. Good faith is defined in G.S. 20-286(8b) as "honest in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in G.S. 25-2-103(1)(b)(subdivision (1)(b) was deleted in 2006)." Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Evidence of Good Faith Held Sufficient. — Where manufacturer gave dealer at least a year's notice concerning the likelihood of cancellation, manufacturer treated dealer no differently than it did any of its other heavy-duty truck franchisees, and more importantly, where, there was no evidence of dishonesty by manufacturer, the record was replete with evidence of manufacturer's good faith in cancelling its heavy-duty truck franchises with dealer.

Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Subdivision (6) Is Constitutional. — The General Assembly reasonably concluded that subdivision (6) of this section promotes the public welfare in an area vitally affecting the general economy of the State, and it is constitutional. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978), aff'd in part, rev'd in part, 296 N.C. 357, 250 S.E.2d 250 (1979).

Subdivision (6) Does Not Unconstitutionally "Impair the Obligations of Contracts". — Subdivision (6) of this section is not a state "law impairing the obligations of contracts" in the constitutional sense. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978), aff'd in part, rev'd in part, 296 N.C. 357, 250 S.E.2d 250 (1979).

Subdivision (6) Does Not Unconstitutionally Take Property Without Compensation. — Subdivision (6) of this section does not involve any disturbance of essential or core expectations arising from contract or amount to a taking without compensation. Rather, it constitutes a reasonable exercise of the police power by the State in furtherance of the public welfare. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978), aff'd in part, rev'd in part, 296 N.C. 357, 250 S.E.2d 250 (1979).

Subdivision (6) Is Not Unconstitutionally Retroactive. — Subdivision (6) of this section, which requires a filing of notice prior to termination of automobile franchise contracts, is not made unconstitutional by retroactive application to existing contracts. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978), aff'd in part, rev'd in part, 296 N.C. 357, 250 S.E.2d 250 (1979).

Subdivision (6) Is Not an Ex Post Facto Law. — Although this Article provides criminal sanctions for violations of subdivision (6) of this section, its retroactive application to an existing contract does not constitute it an ex post facto law prohibited by U.S. Const., Art. I, § 10, cl. 1. That clause applies only in cases in which a crime is created or punishment for a criminal act is increased after the fact and does not speak to the effect of statutes passed after the fact when employed in civil cases. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978), aff'd in part, rev'd in part, 296 N.C. 357, 250 S.E.2d 250 (1979).

The provisions of subdivision (6) of this section are free from ambiguity, apply solely to unilateral franchise terminations by the manufacturer, and do not extend to mutual agreements between manufacturer and dealer to terminate a franchise. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 296 N.C. 357, 250 S.E.2d 250 (1979).

Subdivision (6) Applies to Unilateral Action by Manufacturers, Not Mutual Agreements Between Manufacturer and Dealer. — In effect, the express language of subdivision (6) of this section imposes substantial curbs on the unilateral actions of a manufacturer with respect to franchise termination. The express language does not cover voluntary mutual termination agreements between manufacturer and dealer. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 296 N.C. 357, 250 S.E.2d 250 (1979).

Voluntariness of Termination Irrelevant to Question of Notice to Commissioner. — Subdivision (6) of this section specifically commands that the Commissioner of Motor Vehicles be given the required notice prior to termination or expiration of an automobile dealership franchise. Failure to give the required notice prior to termination or expiration is specifically declared to be unlawful. The voluntariness of such agreements is irrelevant. Mazda Motors of Am., Inc. v. Southwestern Motors, Inc., 36 N.C. App. 1, 243 S.E.2d 793 (1978), aff'd in part, rev'd in part, 296 N.C. 357, 250 S.E.2d 250 (1979).

Good Cause for Failure to Renew Franchise. — To prove that poor sales performance constitutes good cause for its failure to renew respondent's franchise agreements, petitioner must demonstrate that: (1) respondent failed to comply with a provision of the franchise agreements which required satisfactory sales performance; (2) petitioner's performance standards are reasonable; and (3) respondent's failure was not due primarily to economic or market factors beyond his control. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Power to Forestall Franchise Termination. — Neither G.S. 20-301 nor subdivision (6) of this section expressly vest the Commissioner with the power to order parties to enter into a contract. However, the statutory prohibition on franchise termination except for cause remains intact. Thus it is not necessary that the Commissioner have the power to order parties to enter into contracts to enable the agency to function properly. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Commissioner's order finding that GMC failed to renew dealer's franchise agreements without cause and directing that the agreements not be terminated was proper. However, the Commissioner exceeded his authority in ordering GMC to enter "a regular five (5) year motor vehicle dealer sales agreement" with dealer. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Judicial Review of Commissioner's Decision. — The decision of the Motor Vehicles

Commissioner on the termination of a franchise is reviewable pursuant to Chapter 150B of the General Statutes. GMC v. Carolina Truck & Body Co., 102 N.C. App. 349, 402 S.E.2d 139 (1991).

Filing of Petition with DMV. — The actual stamping of a petition mailed by dealer on Oct. 26, 1982, on Nov. 2, 1982 by the party responsible for processing petitions for the DMV did not constitute the required filing, but instead, the receipt of the petition by the DMV constituted its filing. Star Auto. Co. v. Saab-Scania of Am., Inc., 84 N.C. App. 531, 353 S.E.2d 260 (1987).

Written notice to franchisee must state reasons for nonrenewal with sufficient specificity to inform the dealer of the legal grounds for nonrenewal. Star Auto. Co. v. Jaguar Cars, Inc., 95 N.C. App. 103, 382 S.E.2d 226, cert. denied, 325 N.C. 710, 388 S.E.2d 463 (1989).

Evaluation of Written Notice. — Information which the franchisee has received, other than that included in the written notice, may not be taken into account in evaluating the legal sufficiency of the written notice to the franchise. Star Auto. Co. v. Jaguar Cars, Inc., 95 N.C. App. 103, 382 S.E.2d 226, cert. denied, 325 N.C. 710, 388 S.E.2d 463 (1989).

Relevant Market Area Where Same Line Make Represented. — The intent of the legislature was to exclude population outside the designated radius, and the Commissioner of the Division of Motor Vehicles erred by including population lying outside the designated radius when determining "relevant market area," though that population was within a census tract partially within that area. Al Smith Buick Co. v. Mazda Motor of Am., Inc., 122 N.C. App. 429, 470 S.E.2d 552, 1996 N.C. App. 455 (1996), cert. denied, 473 S.E.2d 609 (1996).

Commissioner's Ruling Became Law of the Case. — Commissioner of the Division of Motor Vehicles erred when he found dealer was precluded from pursuing further legal challenges to the establishment of an additional dealership based upon prior consent order, because the commissioner had ruled the consent order ceased to be effective after the lapse of a reasonable time and the manufacturer failed to appeal that ruling, which became the law of the case. Al Smith Buick Co. v. Mazda Motor of Am., Inc., 122 N.C. App. 429, 470 S.E.2d 552, 1996 N.C. App. 455 (1996), cert. denied, 473 S.E.2d 609 (1996).

Written Notice Held Sufficient. — Letter from car distributor to car dealer was sufficiently specific to inform dealer of distributor's basis for nonrenewal and to inform dealer of its statutory rights, where the notice stated that distributor had made the decision not to renew dealer's franchise as part of an "overall effort" to "upgrade and reorganize," and where distributor's letter also recited the factors that it used to make its nonrenewal determination, namely, facilities, location, after-sales service, financial resources and managerial skills and commitment, and that dealer's alleged deficiencies in these areas were distributor's reasons for nonrenewal. Star Auto. Co. v. Jaguar Cars, Inc., 95 N.C. App. 103, 382 S.E.2d 226, cert. denied, 325 N.C. 710, 388 S.E.2d 463 (1989).

Applied in Smith's Cycles, Inc. v. American Honda Motor Co., 26 N.C. App. 76, 214 S.E.2d 785 (1975); Sandhill Motors, Inc. v. American Motors Sales Corp., 667 F.2d 1112 (4th Cir. 1981).

§ 20-305.1. Automobile dealer warranty obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to fully compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers licensed in this State for warranty parts and service either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales incentives program, service incentives program, rebate program, or other form of incentive compensation program. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and
(2) Actually performed the work.

Notwithstanding the foregoing, a manufacturer shall not fail to fully compensate a dealer for warranty or recall work or make any chargeback to the dealer's account based on the dealer's failure to comply with the manufacturer's claim documentation procedure or procedures unless both of the following requirements have been met:

(1) The dealer has, within the previous 12 months, failed to comply with the same specific claim documentation procedure or procedures; and
(2) The manufacturer has, within the previous 12 months, provided a written warning to the dealer by certified United States mail, return

receipt requested, identifying the specific claim documentation procedure or procedures violated by the dealer.

Nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer from adopting or implementing a policy or procedure which provides or allows for the self-audit of dealers, provided, however, that if any such self-audit procedure contains provisions relating to claim documentation, such claim documentation policies or procedures shall be subject to the prohibitions and requirements contained in this subdivision. Notices sent by a manufacturer under a bona fide self-audit procedure shall be deemed sufficient notice to meet the requirements of this subsection provided that the dealer is given reasonable opportunity through self-audit to identify and correct any out-of-line procedures for a period of at least 60 days before the manufacturer conducts its own audit of the dealer warranty operations and procedures. A manufacturer may further not charge a dealer back subsequent to the payment of the claim unless a representative of the manufacturer has met in person at the dealership, or by telephone, with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge-backs and thereafter given the dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to explain the dealer's position relating to each of the proposed charge-backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean, or aggregate data accumulated by the manufacturer, or in relation to claims submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at or prior to the meeting or telephone call with the dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit or review.

(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of the claim unless it can be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means.

(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to take or threaten to take any adverse action against a dealer located in this State, or to otherwise discriminate against any dealer located in this State, on the basis that the dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party, unless the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase of the vehicle from the dealer. The conduct prohibited under this subsection includes, but is not limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of vehicles; or (iii) charging back or withholding payments or other compensation or consideration for which a dealer is otherwise eligible for warranty reimbursement or under a sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from participating in or discrimination against any dealer relating to any sales promotion, incentive program, or contest; or (v) termination of a franchise. In any proceeding brought pursuant to this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's purchase of the vehicle, did not know nor should have reasonably known that the customer intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled, registered, and, where applicable, taxes paid in any state or territory within the United States in the name of a customer who was physically present at the dealership at or prior to the time of sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle would be shipped to a foreign country.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b), (b1), (b2), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. —

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. — Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any damage of any nature occurred to a new motor vehicle at any time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time the repairs were made based upon the dealer's authorized warranty rate for labor and parts and the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices, or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of "motorcycles" as defined in G.S. 20-4.01(27).

(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to a motor vehicle manufacturer shall also apply to a component parts manufacturer. For purposes of this section, a component parts manufacturer means a person, resident, or nonresident of this State who manufactures or assembles new motor vehicle "component parts" and directly warrants the component parts to the consumer. For purposes of this section, component parts means an engine, power train, rear axle, or other part of a motor vehicle that is not warranted by the final manufacturer of the motor vehicle.

(f2) The provisions of subsections (d) and (e) of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(g) Truck Dealer Cost Reimbursement. — Every manufacturer, manufacturer branch, distributor, or distributor branch of new motor vehicles, or any affiliate or subsidiary thereof, which manufactures or distributes new motor vehicles with a gross vehicle weight rating of 16,000 pounds or more shall compensate its new motor vehicle dealers located in this State for the cost of special tools, equipment, and training for which its dealers are liable when the applicable manufacturer, manufacturer branch, distributor, or distributor branch sells a portion of its vehicle inventory to converters and other nondealer retailers. The purpose of this reimbursement is to compensate truck dealers for special additional costs these dealers are required to pay for servicing these vehicles when the dealers are excluded from compensation for these expenses at the point of sale. The compensation which shall be paid pursuant to this subsection shall be applicable only with respect to new motor vehicles with a gross vehicle weight rating of 16,000 pounds or more which are registered to end users within this State and that are sold by a manufacturer, manufacturer branch, distributor, or distributor branch to either:

(1) Persons or entities other than new motor vehicle dealers with whom the manufacturer, manufacturer branch, distributor, or distributor branch has entered into franchises; or

(2) Persons or entities that install custom bodies on truck chassis, including, but not limited to, mounted equipment or specialized bodies for concrete distribution, firefighting equipment, waste disposal, recycling, garbage disposal, buses, utility service, street sweepers, wreckers, and rollback bodies for vehicle recovery; provided, however, that no compensation shall be required to be paid pursuant to this subdivision with respect to vehicles sold for purposes of manufacturing or assembling school buses.

The amount of compensation which shall be payable by the applicable manufacturer, manufacturer branch, distributor, or distributor branch shall be six hundred dollars ($600.00) per new motor vehicle registered in this State whose chassis has a gross vehicle weight rating of 16,000 pounds or more. The compensation required pursuant to this subsection shall be paid by the applicable manufacturer, manufacturer branch, distributor, or distributor branch to its franchised new motor vehicle dealer in closest proximity to the registered address of the end user to whom the motor vehicle has been registered within 30 days after such registration. Upon receiving a request in writing from one of its franchised dealers located in this State, a manufacturer, manufacturer branch, distributor, or distributor branch shall promptly make available to such dealer its records relating to the registered addresses of its new motor vehicles registered in this State for the previous 12 months and its payment of compensation to dealers as provided in this subsection. (1973, c. 88, s. 3; c. 1331, s. 3; 1983, c. 704, ss. 11-13; 1987, c. 827, s. 1; 1989, c. 614, ss. 1, 2; 1991, c. 561, ss. 1-4; 1993, c. 116, ss. 1, 2; 1995, c. 156, s. 1; 1997-319, s. 4; 1999-335, ss. 3, 3.1, 4; 2003-113, s. 5; 2003-258, s. 4; 2007-513, ss. 5-7, 11; 2009-338, ss. 3, 4; 2009-550, s. 2(c).)

Cross References. — As to inapplicability of this section to certain manufacturers and dealers, see G.S. 20-305.5.

Editor's Note. — Subsection (b1), amended by Session Laws 2007-513, s. 6, as set out above, has two subdivisions designated (b1)(1) and two subdivisions designated (b1)(2).

Session Laws 2007-513, s. 13, provides: "This act shall be applicable to all franchises and other contracts and agreements existing between motor vehicle dealers, on the one part, and manufacturers, factory branches, distributors, and distributor branches, on the other part, at the time of its ratification, and to all future franchises, contracts, and other agreements."

Session Laws 2007-513, s. 14, is a severability clause.

Session Laws 2007-513, s. 15, provides in part: "Nothing in this act applies to any administrative proceeding pending before the Commissioner of Motor Vehicles or any case pending in a court on or before the effective date of this act."

Session Laws 2009-338, s. 6, provides: "The terms and provisions of this act shall be applicable to all franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act, and to all future franchises and other agreements."

Session Laws 2009-338, s. 7 contains a severability clause.

Effect of Amendments. — Session Laws 2007-513, ss. 5-7, 11, effective August 30, 2007, in subsection (b), inserted "fully" and "or to otherwise recover ... separate charge, surcharge, or other imposition" in the first sentence, and substituted "payment of the claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a" for "termination of the" in the second sentence; rewrote subsection (b1); in subsection (b2), inserted "reasonable" preceding "written procedures"; and added subsection (g). For applicability, see Editor's notes.

Session Laws 2009-338, ss. 3 and 4, effective

July 24, 2009, added subsections (b3) and (f1).
Session Laws 2009-550, s. 2(c), effective August 28, 2009, added subsection (f2).

§ 20-305.2. Unfair methods of competition.

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership in this State, provided that this section shall not be construed to prohibit:

(1) The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to another; or

(2) The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while in a bona fide relationship with an economically disadvantaged or other independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate thereof, who has made a bona fide, unencumbered initial investment of at least six percent (6%) of the total sales price that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable period of time, not to exceed 12 years, and on reasonable terms and conditions; or

(3) The ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to March 16, 1973, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest; or

(4) The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest; or

(5) The ownership, operation, or control of any facility (location) of a new motor vehicle dealer in this State at which the dealer sells only new and used motor vehicles with a gross weight rating of 8,500 pounds or more, provided that both of the following conditions have been met:

   a. The facility is located within 35 miles of manufacturing or assembling facilities existing as of January 1, 1999, and is owned or operated by the manufacturer, manufacturing branch, distributor, distributor branch, or any affiliate or subsidiary thereof which assembles, manufactures, or distributes new motor vehicles with a gross weight rating of 8,500 pounds or more by such dealer at said location; and

   b. The facility is located in the largest Standard Metropolitan Statistical Area (SMSA) in the State; or

(6) As to any line make of motor vehicle for which there is in aggregate no more than 13 franchised new motor vehicle dealers (locations) licensed and in operation within the State as of January 1, 1999, the

ownership, operation, or control of one or more new motor vehicle dealership trading solely in such line make of vehicle by the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof, provided however, that all of the following conditions are met:

a. The manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof does not own directly or indirectly, in aggregate, in excess of forty-five percent (45%) interest in the dealership;

b. At the time the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof first acquires ownership or assumes operation or control with respect to any such dealership, the distance between the dealership thus owned, operated, or controlled and the nearest other new motor vehicle dealership trading in the same line make of vehicle, is no less than 35 miles;

c. All the manufacturer's franchise agreements confer rights on the dealer of the line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate; and

d. That as of July 1, 1999, not fewer than half of the dealers of the line make within the State own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(7) The ownership, operation, or control of a dealership that sells primarily recreational vehicles as defined in G.S. 20-4.01 by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001.

(b) Subsection (a) of this section does not apply to manufacturers or distributors of trailers or semitrailers that are not recreational vehicles as defined in G.S. 20-4.01.

(c) For purposes of subsection (d) of this section, the following definitions apply:

(1) Former Franchisee. — A new motor vehicle dealer, as defined in G.S. 20-286(13), that has entered into a franchise, as defined in G.S. 20-286(8a) with a predecessor manufacturer and that has either:

a. Entered into a termination agreement or deferred termination agreement with a predecessor or successor manufacturer related to such franchise; or

b. Has had such franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended.

(2) Relevant market area. — The area within a 10-, 15-, or 20-mile radius around the site of the previous franchisee's dealership facility, as determined in the same manner that the relevant market area is determined under G.S. 20-286(13b) when a manufacturer is seeking to establish an additional new motor vehicle dealer.

(3) Successor manufacturer. — Any motor vehicle manufacturer, as defined in G.S. 20-286(8e), that, on or after January 1, 2009, acquires, succeeds to, or assumes any part of the business of another manufacturer, referred to as the "predecessor manufacturer," as the result of any of the following:

a. A change in ownership, operation, or control of the predecessor manufacturer by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, court-approved sale, operation of law or otherwise.

b. The termination, suspension, or cessation of a part or all of the business operations of the predecessor manufacturer.

c. The discontinuance of the sale of the product line.

d. A change in distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor altogether.

(d) For a period of four years from the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer, it shall be unlawful for such successor manufacturer to enter into a same line make franchise with any person, as defined in G.S. 20-4.01(28), or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area of a former franchisee who owned or leased a dealership facility in that relevant market area without first offering the additional or relocated franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

(1) As a result of the former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then-existing dealership facility located within that relevant market area.

(2) The successor manufacturer has paid the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, the fair market value of the former franchisee's franchise calculated as prescribed in G.S. 20-305(6)d.3.

(3) The successor manufacturer proves that the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, by reason of lack of training, lack of prior experience, poor past performance, lack of financial ability, or poor character, is unfit to own or manage the dealership. A successor manufacturer who seeks to assert that a former franchisee is unfit to own or manage the dealership must file a petition seeking a hearing on this issue before the Commissioner and shall have the burden of proving lack of fitness at such hearing. The Commissioner shall try to conduct the hearing and render a final determination within 120 days after the manufacturer's petition has been filed. No successor dealer, other than the former franchisee, may be appointed or franchised by the successor manufacturer within the relevant market area until the Commissioner has held a hearing and rendered a determination on the issue of the fitness of the previous franchisee to own or manage the dealership. (1973, c. 88, s. 3; 1983, c. 704, ss. 14, 15; 1999-335, s. 5; 2001-510, s. 3; 2002-72, ss. 19(d), 19(e); 2003-416, s. 11; 2009-496, s. 2.)

Cross References. — As to inapplicability of this section to certain manufacturers and dealers, see G.S. 20-305.5.

Editor's Note. — Subdivisions (c)(1) and (c)(3) were renumbered as subdivisions (c)(3) and (c)(1), respectively, at the direction of the Revisor of Statutes to maintain alphabetical order.

Session Laws 2009-496, s. 3, provides: "The terms and provisions of this act shall be applicable to all franchises and other agreements entered into on or after the effective date of this act [August 26, 2009] between any new motor vehicle dealer located in this State and a manufacturer or distributor.

Session Laws 2009-496, s. 4 is a severability clause.

Effect of Amendments. — Session Laws 2009-496, s. 2, effective August 26, 2009, substituted "Subsection (a) of this section" for "This section" at the beginning of subsection (b); and added subsections (c) and (d). For applicability, see Editor's note.

CASE NOTES

Cited in American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

§ 20-305.3. Hearing notice.

In every case of a hearing before the Commissioner authorized under this Article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 150B of the General Statutes. The costs of such hearings shall be assessed by the Commissioner. (1973, c. 88, s. 3; c. 1331, s. 3; 1987, c. 827, s. 1.)

Cross References. — As to inapplicability of this section to certain manufacturers and dealers, see G.S. 20-305.5.

CASE NOTES

Cited in Sandhill Motors, Inc. v. American Motors Sales Corp., 667 F.2d 1112 (4th Cir. 1981); American Motors Sales Corp. v. Peters, 58 N.C. App. 684, 294 S.E.2d 764 (1982).

§ 20-305.4. Motor Vehicle Dealers' Advisory Board.

(a) The Motor Vehicle Dealers' Advisory Board shall consist of six members; three of which shall be appointed by the Speaker of the House of Representatives, and three of which shall be appointed by the President Pro Tempore of the Senate to consult with and advise the Commissioner with respect to matters brought before the Commissioner under the provisions of G.S. 20-304 through 20-305.4.

(b) Each member of the Motor Vehicle Dealers' Advisory Board shall be a resident of North Carolina. Three members of the Board shall be franchised dealers in new automobiles or trucks, duly licensed and engaged in business as such in North Carolina, provided that no two of such dealers may be franchised to sell automobiles or trucks manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Three members of the Board shall not be motor vehicle dealers or employees of a motor vehicle dealer.

(c) The Speaker shall appoint two of the dealer members and one of the public members and shall fill any vacancy in said positions and the President Pro Tempore of the Senate shall appoint one of the dealer members and two of the public members and shall fill any vacancy in said positions. In making the initial appointments the Speaker shall designate that the two dealer members shall serve for one and three years respectively and the public member shall serve for two years, and in making the initial appointments the Lieutenant Governor shall designate that the dealer member shall serve for two years and the two public members shall serve for one and three years respectively.

(d) Two members of the first Board appointed shall serve for a period of three years, two members of the first Board shall serve for a period of two years, and two members of the first Board shall serve for a period of one year.

Subsequent appointments shall be for terms of three years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the Board shall meet at the call of the Commissioner and shall receive as compensation for their services seven dollars ($7.00) for each day actually engaged in the exercise of the duties of the Board and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards. (1973, c. 88, s. 3; 1995, c. 490, s. 36.)

Cross References. — As to inapplicability of this section to certain manufacturers and dealers, see G.S. 20-305.5.

§ 20-305.5. Sections 20-305, subdivisions (4) through (28), and 20-305.1 to 20-305.4 not applicable to certain manufacturers and dealers.

The provisions of G.S. 20-305(4) through G.S. 20-305(28) and 20-305.1 to 20-305.4 shall not apply to manufacturers of, or dealers in, mobile or manufactured type housing or recreational trailers. (1973, c. 88, s. 4; 1983, c. 704, s. 18.)

Cross References. — See the Editor's note under G.S. 20-305, regarding the applicability of subdivision (3) of that section.

§ 20-305.6. Unlawful for `manufacturers to unfairly discriminate among dealers.

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.

(2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or distributor branch are sold or serviced with one or more other line makes of vehicles.

(3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.

(4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade. (2001-510, s. 4.)

§ 20-305.7. Protecting dealership data and consent to access dealership information.

(a) No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(b) No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor may access or utilize customer or prospect information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State for purposes of soliciting any such customer or prospect on behalf of, or directing such customer or prospect to, any other dealer. The limitations in this subsection do not apply to:

(1) A customer that requests a reference to another dealership;

(2) A customer that moves more than 60 miles away from the dealer whose data was accessed;

(3) Customer or prospect information that was provided to the dealer by the manufacturer, factory branch, distributor, or distributor branch; or

(4) Customer or prospect information obtained by the manufacturer, factory branch, distributor, or distributor branch where the dealer agrees to allow the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor the right to access and utilize the customer or prospect information maintained in the dealer's dealer management computer system for purposes of soliciting any customer or prospect of the dealer on behalf of, or directing such customer or prospect to, any other dealer in a separate, stand-alone written instrument dedicated solely to such authorization.

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide such access. Prior to obtaining said consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall provide to the dealer a written list of all third parties to whom any North Carolina dealer management computer system data has been provided within the 12-month period ending November 1 of the prior year. The list shall further describe the scope of the data provided. In addition to the initial list, a dealer management computer system vendor or any third party acting on behalf of, or through a dealer management computer system vendor shall provide to the dealer an annual list of third parties to whom said data is being provided on November 1 of each year and to whom said data has been provided in the preceding 12 months and describe the scope of the data provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any such person's obligations to comply with the terms of this section and any additional State or federal laws (and any rules or regulations promulgated thereunder) applicable to them with respect to such access. In addition, no dealer management computer system vendor may refuse to provide a dealer management computer system to a motor vehicle dealer located in this State if the dealer refuses to provide any consent under this subsection, except to the extent that consent is deemed by the parties to be reasonably necessary in order for the vendor to provide the system to the dealer.

(c) No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, may access or obtain data from or write data to a dealer management computer system utilized by a motor vehicle dealer located in this State, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the customer and dealership information maintained in the system. No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(d) Any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to customer or motor vehicle dealership data in a dealership management computer system utilized by a motor vehicle dealer located in this State shall provide notice to the dealer of any security breach of dealership or customer data obtained through such access, which at the time of the breach was in the possession or custody of the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party. The disclosure notification shall be made without unreasonable delay by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party following discovery by the person, or notification to the person, of the breach. The disclosure notification shall describe measures reasonably necessary to determine the scope of the breach and corrective actions which may be taken in an effort to restore the integrity, security, and confidentiality of such data. Such measures and corrective actions shall be implemented as soon as practicable by all persons responsible for the breach.

(e) Nothing in this section shall preclude, prohibit, or deny the right of the manufacturer, factory branch, distributor, or distributor branch to receive customer or dealership information from a motor vehicle dealer located in this State for the purposes of complying with federal or State safety requirements or implementing steps related to manufacturer recalls at such times as necessary in order to comply with federal and State requirements or manufacturer recalls provided that receiving this information from the dealer does not impair, alter, or reduce the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer.

(f) The following definitions apply to this section:

(1) "Dealer management computer system" — A computer hardware and software system having dealer business process management modules that provide real time access to customer records and transactions by a motor vehicle dealer located in this State and that allow such motor vehicle dealer timely information in order to sell vehicles, parts or services through such motor vehicle dealership.

(2) "Dealer management computer system vendor" — A seller or reseller of dealer management computer systems (but only to the extent that such person is engaged in such activities).

(3) "Security breach" — An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information shall constitute a security breach.

(g) The provisions of G.S. 20-308.1(d) shall not apply to an action brought under this section against a dealer management computer system vendor.

(h) This section shall apply to contracts entered into on or after November 1, 2005. (2005-409, s. 4; 2007-513, s. 10.)

Editor's Note. — Session Laws 2007-513, s. 13, provides: "This act shall be applicable to all franchises and other contracts and agreements existing between motor vehicle dealers, on the one part, and manufacturers, factory branches, distributors, and distributor branches, on the other part, at the time of its ratification, and to all future franchises, contracts, and other agreements."

Session Laws 2007-513, s. 14, is a severability clause.

Session Laws 2007-513, s. 15, provides in part: "Nothing in this act applies to any administrative proceeding pending before the Commissioner of Motor Vehicles or any case pending in a court on or before the effective date of this act."

Effect of Amendments. — Session Laws 2007-513, s. 10, effective August 30, 2007, in subsection (b), added the introductory paragraph and subdivisions (b)(1) through (b)(4). For applicability, see Editor's notes.

§ 20-306. Unlawful for salesman to sell except for his employer; multiple employment; persons who arrange transactions involving the sale of new motor vehicles.

It shall be unlawful for any motor vehicle salesman licensed under this Article to sell or exchange or offer or attempt to sell or exchange any motor vehicle other than his own except for the licensed motor vehicle dealer or dealers by whom he is employed, or to offer, transfer or assign, any sale or exchange, that he may have negotiated, to any other dealer or salesman. A salesman may be employed by more than one dealer provided such multiple employment is clearly indicated on his license. It shall be unlawful for any person to, for a fee, commission, or other valuable consideration, arrange or offer to arrange a transaction involving the sale of a new motor vehicle; provided, however, this prohibition shall not be applicable to:

(1) A franchised motor vehicle dealer as defined in G.S. 20-286(8b) who is licensed under this Article or a sales representative who is licensed under this Article when acting on behalf of the dealer;
(2) A manufacturer who is licensed under this Article or bona fide employee of such manufacturer when acting on behalf of the manufacturer;
(3) A distributor who is licensed under this Article or a bona fide employee of such distributor when acting on behalf of the distributor; or
(4) At any point in the transaction the bona fide owner of the vehicle involved in the transaction. (1955, c. 1243, s. 22; 1993, c. 331, s. 3.)

Editor's Note. — Session Laws 1993, c. 331, which amended this section, by adding at the end of the section catchline "persons who arrange transactions involving the sale of new motor vehicles"; in the second sentence substituting "A salesman" for "Salesmen"; and adding the third sentence with subdivisions (1) through (4), in s. 4 provides: "Sections 2 and 3 of this act shall not apply to manufacturers of or dealers in mobile or manufactured type housing or recreational trailers."

§ 20-307. Article applicable to existing and future franchises and contracts.

The provisions of this Article shall be applicable to all franchises and contracts existing between dealers and manufacturers, factory branches, and distributors at the time of its ratification, and to all such future franchises and contracts. (1955, c. 1243, s. 23.)

§ 20-307.1. Jurisdiction.

A franchisee who is substantially and primarily engaged in the sale of motor vehicles or parts, materials, or components of motor vehicles, including batteries, tires, transmissions, mufflers, painting, lubrication or tune-ups may bring suit against any franchisor, engaged in commerce, in the General Court of Justice in the State of North Carolina that has proper venue. (1983, c. 704, s. 24.)

§ 20-308. Penalties.

Any person violating any of the provisions of this Article, except for G.S. 20-305.7, shall be guilty of a Class 1 misdemeanor. (1955, c. 1243, s. 24; 1993, c. 539, s. 386; 1994, Ex. Sess., c. 24, s. 14(c); 2005-409, s. 5.)

§ 20-308.1. Civil actions for violations.

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any motor vehicle dealer who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing a loss of money or property.

(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages. (1983, c. 704, s. 16; 1991, c. 510, s. 5; 2001-510, s. 5; 2007-513, s. 8.)

Editor's Note. — Session Laws 2007-513, s. 13, provides: "This act shall be applicable to all franchises and other contracts and agreements existing between motor vehicle dealers, on the one part, and manufacturers, factory branches, distributors, and distributor branches, on the other part, at the time of its ratification, and to all future franchises, contracts, and other agreements."

Session Laws 2007-513, s. 14, is a severability clause.

Session Laws 2007-513, s. 15, provides in part: "Nothing in this act applies to any administrative proceeding pending before the Commissioner of Motor Vehicles or any case pending in a court on or before the effective date of this act."

Effect of Amendments. — Session Laws 2007-513, s. 8, effective August 30, 2007, substituted "motor vehicle dealer" for "person" in subsection (a). For applicability, see Editor's notes.

CASE NOTES

Cited in Huberth v. Holly, 120 N.C. App. 348, 462 S.E.2d 239 (1995).

§ 20-308.2. Applicability of this Article.

(a) Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale, or has business dealings, with respect to a new motor vehicle sale within this State, shall be subject to the provisions of this Article and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this Article shall not be affected by a choice of law clause in any franchise, agreement, waiver, novation, or any other written instrument.

(c) Any provision of any agreement, franchise, waiver, novation or any other written instrument which is in violation of any section of this Article shall be deemed null and void and without force and effect.

(d) It shall be unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this Article on the part of the manufacturer or distributor.

(e) The provisions of this Article shall apply to all written agreements between a manufacturer, wholesaler, or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a motor vehicle dealer and a manufacturer, wholesaler, or distributor. (1983, c. 704, s. 17; 2005-409, s. 6.)

§§ 20-308.3 through 20-308.12: Reserved for future codification purposes.

Article 12A.

Motor Vehicle Captive Finance Source Law.

§ 20-308.13. Regulation of motor vehicle captive finance sources.

The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate motor vehicle captive finance sources doing business in North Carolina to protect and preserve the investments and properties of the citizens of this State. (2005-409, s. 3.)

Editor's Note. — Session Laws 2005-409, s. 3, originally enacted this Article as G.S. 20-308.3 through 20-308.12. It has been renumbered as G.S. 20-308.13 through 20-308.22 at the direction of the Revisor of Statutes.

Session Laws 2005-409, s. 8, made this Article effective January 1, 2006.

§ 20-308.14. Definitions.

The definitions contained in G.S. 20-286 shall be applicable to the provisions of this Article. (2005-409, s. 3.)

§ 20-308.15. Prohibited contractual requirements imposed by manufacturer, distributor, or captive finance source.

It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this State to agree to any terms, conditions, or requirements that are set forth in subdivisions (1) through (8) below in order for any such dealer to sell to any captive finance source (defined below) any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers ("contract for sale or lease"), or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any consumer transaction incentive program payable to the consumer or the dealer and offered by or through any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in North Carolina and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch ("captive finance source"):

(1) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer's name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer's finance application or title processing document, or is for the purpose of processing regular titling of the vehicle.

(2) Require a dealer to warrant or guarantee the accuracy and completeness of any personal, financial, or credit information provided by the customer on the credit application and/or in the course of applying for credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer's knowledge.

(3) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer's material breach of the terms of a written agreement with the captive finance source or the terms for the purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subdivisions (1) through (8) of this section, or (ii) the subject dealer's violation of applicable law. For purposes of this section, the dealer may, however, contractually obligate itself to warrant the accuracy of the information provided on the finance contact, but such warranty can only be enforced if the captive finance source gives the dealer a reasonable opportunity to cure or correct any errors on the finance contract where cure or correction is possible. For purposes of this section, any allegation by a third party that would constitute a breach of the terms of a written agreement between the dealer and a captive finance source shall be considered a material breach.

(4) Notwithstanding the terms of any contract or agreement, treat a dealer's breach of an agreement between the dealer and a captive finance source with respect to the captive finance source's purchase of individual contracts for the sale or lease of a motor vehicle as a breach of such agreement with respect to purchase of other such contracts, nor shall such a breach, in and of itself, constitute a breach of any other agreement between the dealer and the captive finance source, or between the dealer and any affiliate of such captive finance source.

(5) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws.

(6) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer's voluntary and written consent subsequent to the filing of such litigation.

(7) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer's account. This section shall not apply to or limit (i) reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself; (ii) a delay or reduction in the payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or (iii) a chargeback to a dealer (or offset of any amounts otherwise payable to a dealer by the captive finance source) for any indebtedness properly owing from a dealer to the captive finance source as part of a specific program covered by this section, the terms of which have been agreed to by the dealer in advance, except to the extent such chargeback would otherwise be prohibited under subdivisions (1) through (8) of this section.

(8) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be voidable, to the extent that it violates this section, at any time at the election of the dealer. (2005-409, s. 3.)

§ 20-308.16. Powers of Commissioner.

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a captive finance source with whom the dealer does business in North Carolina has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named captive finance source requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other remedy, bring an action in the name of the State against that person and any other persons concerned or in any way participating in, or about to participate in, practices or acts so in violation, to enjoin any persons from continuing the violations.

(e) The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section.

(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the captive finance source through an appeals board or internal grievance procedure of the captive finance source, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the captive finance source, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the captive finance source's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the captive finance source has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the captive finance source before seeking redress from the Commissioner as provided in this Article. (2005-409, s. 3.)

§ 20-308.17. Rules and regulations.

The Commissioner may make such rules and regulations, not inconsistent with the provisions of this Article, as he shall deem necessary or proper for the effective administration and enforcement of this Article, provided that a copy of such rules and regulations shall be mailed to each motor vehicle dealer licensee and captive finance source 30 days prior to the effective date of such rules and regulations. (2005-409, s. 3.)

§ 20-308.18. Hearing notice.

In every case of a hearing before the Commissioner authorized under this Article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 150B of the General Statutes. The costs of such hearings shall be assessed by the Commissioner. (2005-409, s. 3.)

§ 20-308.19. Article applicable to existing and future agreements.

The provisions of this Article shall be applicable to all contracts and agreements existing between dealers and captive finance sources at the time of its ratification and to all such future contracts and agreements. (2005-409, s. 3.)

§ 20-308.20. Jurisdiction.

A new motor vehicle dealer located in this State may bring suit against any captive finance source engaged in commerce in this State in the General Court of Justice in the State of North Carolina that has proper venue. (2005-409, s. 3.)

§ 20-308.21. Civil actions for violations.

(a) Notwithstanding the terms, provisions, or conditions of any agreement or other terms or provisions of any novation, waiver, arbitration agreement, or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to an agreement who is so injured in his business or property by a violation of a provision of this Article relating to that agreement, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a captive finance source may have the effect of causing a loss of money or property.

(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and captive finance source shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more captive finance sources doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a captive finance source doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding agreements with that captive finance source in this State. With respect to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages. (2005-409, s. 3.)

§ 20-308.22. Applicability of this Article.

(a) Any captive finance source who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising the availability of financing for the sale or lease of motor vehicles within this State, or who has business dealings within this State, shall be subject to the provisions of this Article and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this Article shall not be affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(c) Any provision of any agreement, waiver, novation, or any other written instrument which is in violation of any section of this Article shall be deemed null and void and without force and effect to the extent it violates this section.

(d) It shall be unlawful for a captive finance source to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this Article on the part of the captive finance source. (2005-409, s. 3.)

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.

(a) No motor vehicle shall be registered in this State unless the owner at the time of registration provides proof of financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

(a1) An owner of a commercial motor vehicle, as defined in G.S. 20-4.01(3d), shall have financial responsibility for the operation of the motor vehicle in an amount equal to that required for for-hire carriers transporting nonhazardous property in interstate or foreign commerce in 49 C.F.R. § 387.9.

(b) Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer, as these terms are defined and described in Article 9A, Chapter 20 of the General Statutes of North Carolina, as amended.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned. It shall be the duty of insurance companies, upon request of the Division, to verify the accuracy of any owner's certification.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Division of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this Article.

(e) Repealed by Session Laws 2006-213, s. 5, effective July 1, 2008, and applicable to lapses occurring on or after that date.

(f) The Commissioner shall administer and enforce the provisions of this Article and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Commissioner under the provisions of this Article.

(g) Repealed by Session Laws 2007-484, s. 7(a), effective July 1, 2008, and applicable to lapses occurring on or after that date.

(h) Recodified as G.S. 20-311(g) by Session Laws 2007-484, s. 7(d), effective July 1, 2008, and applicable to lapses occurring on or after that date. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2; 1967, c. 822, ss. 1, 2; c. 857, ss. 1, 2; 1971, c. 477, ss. 1, 2; c. 924; 1975, c. 302; c. 348, ss. 1-3; c. 716, s. 5; 1979, 2nd Sess., c. 1279, s. 1; 1981, c. 690, s. 25; 1983, c. 761, s. 146; 1983 (Reg. Sess., 1984), c. 1069, ss. 1, 2; 1985, c. 666, s. 84; 1991, c. 402, s. 1; 1999-330, s. 4; 1999-452, s. 20; 2000-140, s. 100(a); 2000-155, s. 20; 2005-276, s. 6.37(p); 2006-213, s. 5; 2006-264, s. 38; 2007-484, ss. 7(a), (d); 2009-550, s. 4.)

Cross References. — As to Motor Vehicle Safety and Financial Responsibility Act of 1953, see G.S. 20-279.1 to 20-279.39.

Support Troops Participating in Operations Enduring Freedom and Noble Eagle. — For provisions of Session Laws 2001-508, ss. 3 to 5(b), see Editor's Note to G.S. 20-7.

Waiver of Deadlines, Fees, and Penalties for Deployed Military Personnel. — For provisions of Session Laws 2003-300, ss. 1 to 3, as amended by Session Laws 2004-203, s. 80, see Editor's Note to G.S. 20-7.

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 6.37(w), provides: "The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-484, s. 7(e), provides: "This section is effective on the effective date of S.L. 2006-213 [July 1, 2008] and applies to lapses occurring on or after that date."

Effect of Amendments. — Session Laws 2006-213, s. 5, effective July 1, 2008, and applicable to lapses occurring on or after that date, repealed subsection (e).

Session Laws 2006-264, s. 38, effective August 27, 2006, added subsection (h).

Session Laws 2007-484, ss. 7(a) and (d), repealed subsection (g), relating to proceeds from civil penalties and fines, and recodified subsection (h) as G.S. 20-311(g). For effective date and applicability, see Editor's note.

Session Laws 2009-550, s. 4, effective August 28, 2009, substituted "provide proof of financial" for "has financial" in subsection (a).

Legal Periodicals. — For case law survey on insurance, see 41 N.C.L. Rev. 484 (1963).

For note on the State's inability to suspend the driver's license of a bankrupt who fails to satisfy an accident judgment debt, see 50 N.C.L. Rev. 350 (1972).

For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

For note as to terminating an insurance policy according to North Carolina's financial responsibility legislation, in light of Peerless Ins. Co. v. Freeman, 78 N.C. App. 774, 338 S.E.2d 570, aff'd per curiam, 317 N.C. 145, 343 S.E.2d 539 (1986), see 65 N.C.L. Rev. 1409 (1987).

For note, "Sutton v. Aetna Casualty & Surety Co.: The North Carolina Supreme Court Approves Stacking of Underinsured Motorist Coverage—Will Uninsured Coverage Follow?," see 68 N.C. L. Rev. 1281 (1990).

CASE NOTES

This Article is a remedial statute and will be liberally construed to carry out its beneficent purpose of providing compensation to those who have been injured by automobiles. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

The manifest purpose of this Article is to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and in respect of a motor vehicle liability policy to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. To bar recovery from the insurer on account of such policy violations would practically nullify the statute by making the enforcement of the rights of the person intended to be protected dependent upon the acts of the very person who caused the injury. Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

The manifest purpose of this Article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle. Perkins v. American Mut. Fire Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

The purpose of this Article is to assure the protection of liability insurance, or other type of established financial responsibility, up to the minimum amount specified in this Article, to persons injured by the negligent operation of a motor vehicle upon the highways of this State. To that end, the act makes it mandatory that the owner of a registered motor vehicle maintain proof of financial responsibility throughout such registration of the vehicle. This may be done by the owner's obtaining, and maintaining in effect, a policy of automobile liability insurance (G.S. 20-279.19, 20-314). To enable an owner so to comply with this requirement of the act, even though he is unable to procure such insurance in the usual way, the act provides that the provisions of the Financial Responsibility Act of 1953, with reference to the assigned risk plan, "shall apply to filing and maintaining proof of financial responsibility required by" the Act of 1957 (G.S. 20-314). Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

The manifest purpose of this Article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle, and, in respect of a "motor vehicle liability policy," to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

The primary purpose of the law requiring compulsory insurance is to furnish at least partial compensation to innocent victims who have suffered injury and damage as a result of the negligent operation of a motor vehicle upon the public highway. Allstate Ins. Co. v. Hale, 270 N.C. 195, 154 S.E.2d 79 (1967).

It is manifest that the purpose of this Article is to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle. Nationwide Mut. Ins. Co. v. Cotten, 12 N.C. App. 212, 182 S.E.2d 801, rev'd on other grounds, 280 N.C. 20, 185 S.E.2d 182 (1971).

The definition of "owner" given in G.S. 20-4.01(26) applies to all Chapter 20 and to the Financial Responsibility Act unless the context requires otherwise. Jenkins v. Aetna Cas. & Sur. Co., 91 N.C. App. 388, 371 S.E.2d 761 (1988), rev'd on other grounds, 324 N.C. 394, 378 S.E.2d 773 (1989).

Passage of Title for Purposes of Tort Law and Insurance Coverage. — For purposes of tort law and liability insurance coverage, no ownership passes to the purchaser of a motor vehicle which requires registration until transfer of legal title is effected as provided in G.S. 20-72(b). The general rule then, as between vendor and vendee, is that the vendee does not acquire valid owner's liability insurance until legal title has been transferred or assigned to the vendee by the vendor. Jenkins v. Aetna Cas. & Sur. Co., 91 N.C. App. 388, 371 S.E.2d 761 (1988), rev'd on other grounds, 324 N.C. 394, 378 S.E.2d 773 (1989).

This Article obliges a motorist either to post security or to carry liability insurance, not accident insurance to indemnify all persons who might be injured by the insured's car. When the legislature passed the act it was not in the legislative contemplation that each driver in a two-car collision would recover from the other's insurance carrier. Moore v. Young, 263 N.C. 483, 139 S.E.2d 704 (1965); McKinney v. Morrow, 18 N.C. App. 282, 196 S.E.2d 585, cert. denied, 283 N.C. 665, 197 S.E.2d 874 (1973).

This Article and Article 9A Are to Be Construed in Pari Materia. — The Motor Vehicle Safety and Financial Responsibility Act of 1953 applies to drivers whose licenses have been suspended and relates to the restoration of drivers' licenses, while the Vehicle Financial Responsibility Act of 1957 applies to all motor vehicle owners and relates to the registration of motor vehicles. The two acts are complementary and the latter does not repeal or modify the former, but incorporates portions of the former by reference, and the two acts are to be construed in pari materia so as to harmonize them and give effect to both. Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961).

This Article requires every owner of a motor vehicle, as a prerequisite to the registration thereof to show proof of financial responsibility in the manner prescribed by Article 9A of this Chapter. Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960); First Union Nat'l Bank v. Hackney, 266 N.C. 17, 145 S.E.2d 352 (1965); Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

This Article and Article 9A are to be construed together so as to harmonize their provisions and to effectuate the purpose of the legislature. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

The 1953 Act, found at G.S. 20-279.1 to 20-279.39, applies to drivers whose licenses have been suspended and relates to the restoration of driver's licenses while this article, the 1957 Act, found at G.S. 20-309 to 20-319, applies to all motor vehicles' owners and relates to vehicle registration. The two Acts are complementary and are to be construed in pari materia so as to harmonize them and give effect to both. Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87, cert. denied, 329 N.C. 499, 407 S.E.2d 539 (1991).

This Article and Article 9 of Chapter 20 Supersede Section 58-3-10. — Section 58-3-10, adopted in 1901, falls within Chapter 58, Insurance, Article 3, General Regulations for Insurance. As an earlier and more general statement of insurance law, it is superseded with respect to automobile liability insurance by Chapter 20, Motor Vehicles, specifically by Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953, and Article 13, the Vehicle Financial Responsibility Act of 1957. Chapter 20 represents a complete and comprehensive legislative scheme for the regulation of motor vehicles and, as such, its insurance provisions regarding automobiles prevail over the more general insurance regulations of Chapter 58. Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87, cert. denied, 329 N.C. 499, 407 S.E.2d 539 (1991).

Financial Responsibility Must Be Maintained on All Motor Vehicles. — Under this section financial responsibility as provided in Article 9A of Chapter 20 of the General Statutes—i.e., the Financial Responsibility Act—must be maintained upon all motor vehicles registered in this State. Hendrickson v. Lee, 119 N.C. App. 444, 459 S.E.2d 275 (1995).

Effect of Issuance of Certificate by Insurer. — By the issuance of the certificate an insurer represents that it has issued and there is in effect an owner's motor vehicle liability policy. Crisp v. State Farm Mut. Auto. Ins. Co., 256 N.C. 408, 124 S.E.2d 149 (1962).

By the issuance of the certificate the insurer represents that everything requisite for a binding insurance policy has been performed, including payment, or satisfactory arrangement for payment, of premium. Once the certificate has been issued, nonpayment of premium, nothing else appearing, is no defense in a suit by a third party beneficiary against insurer. To avoid liability insurer must allege and prove cancellation and termination of the insurance policy in accordance with the applicable statute, unless it is established by plaintiff's evidence or admissions. Crisp v. State Farm Mut. Auto. Ins. Co., 256 N.C. 408, 124 S.E.2d 149 (1962).

Reformation of Insurance Policy to Comply With Statute. — Superior court properly reformed an insurance policy to include the amount of minimum coverage required by G.S. 20-309(a1); construing G.S. 20-279.21 and G.S. 20-309 in pari materia, just as provisions of G.S. 20-279.21 were read into every insurance policy as a matter of law, provisions of G.S. 20-309(a1) were also read into every insurance policy as a matter of law. N.C. Farm Bureau Mut. Ins. Co. v. Armwood, 181 N.C. App. 407, 638 S.E.2d 922, 2007 N.C. App. LEXIS 156 (2007), rev'd, 361 N.C. 576, 653 S.E.2d 392 (2007).

Time Gaps in Coverage Permitted. — The Vehicle Financial Responsibility Act of 1957 permits the possibility of time gaps in insurance coverage; that is, short periods in which vehicles are uninsured. Fincher v. Rhyne, 266 N.C. 64, 145 S.E.2d 316 (1965).

The requirements of this section with respect to cancellation must be observed or the attempt at cancellation fails. Allstate Ins. Co. v. Hale, 270 N.C. 195, 154 S.E.2d 79 (1967).

Subsection (e) of this section prescribe the procedure pursuant to which a policy issued for the purpose of complying with the requirements of this Article may be cancelled by the insurance carrier having the right to cancel. In order to cancel such policy, the carrier must comply with these procedural requirements of the statute or the attempt at cancellation fails. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

In order to be effective, a purported cancellation must comply with the provisions of subsection (e) of this section and § 20-310. Redmon v. United States Fid. & Guar. Co., 21 N.C. App. 704, 206 S.E.2d 298, cert. denied, 285 N.C. 661, 207 S.E.2d 755 (1974).

An insurer may not cancel for nonpayment of premiums without following the provisions of subsection (e) of this section and G.S. 20-310. Nationwide Mut. Ins. Co. v. Davis, 7 N.C. App. 152, 171 S.E.2d 601 (1970).

Before an insurer may cancel or refuse to renew a policy of automobile liability insurance for failure to pay a premium due, the insurer must follow the provisions of G.S. 20-310 and subsection (e) of this section. Smith v. Nationwide Mut. Ins. Co., 72 N.C. App. 400, 324 S.E.2d 868, rev'd on other grounds, 315 N.C. 262, 337 S.E.2d 569 (1985).

Purpose of Notice Requirement. — The purpose of the notice to the Department (now Division) is to enable it to recall the registration and license plate issued for the vehicle unless the owner makes other provision for compliance with the Vehicle Financial Responsibility Act. Nationwide Mut. Ins. Co. v. Cotten, 280 N.C. 20, 185 S.E.2d 182 (1971).

Notice by Insurer to Insured Is Not Required Where Insured Has Terminated Policy. — Where a policy is terminated or cancelled by an insured, the insurer is not required to give notice of cancellation to the insured. Nationwide Mut. Ins. Co. v. Davis, 7 N.C. App. 152, 171 S.E.2d 601 (1970).

And Failure to Give Notice to Department of Termination by Insured Did Not Affect Validity of Cancellation. — Where the insured terminated a policy issued pursuant to the Vehicle Responsibility Act of 1957, the insurer was required to notify the Department (now Division) of Motor Vehicles, but failure to give such notice did not affect the validity or binding effect of the cancellation. Nationwide Mut. Ins. Co. v. Davis, 7 N.C. App. 152, 171 S.E.2d 601 (1970), decided under this section as it stood before the 1979 (2nd Sess.) amendment.

Distinction Between Termination by Insurer and by Insured Under Former Law. — See Nationwide Mut. Ins. Co. v. Cotten, 280 N.C. 20, 185 S.E.2d 182 (1971); Bailey v. Nationwide Mut. Ins. Co., 19 N.C. App. 168, 198 S.E.2d 246 (1973).

The mandatory language of subsection (e) of this section did not invest the Commissioner of the Division of Motor Vehicles with authority to override the notification requirement contained therein. Allstate Ins. Co. v. McCrae, 325 N.C. 411, 384 S.E.2d 1 (1989), decided under law in effect prior to 1984 amendment.

Effect of Defective Notice of Cancellation to Division of Motor Vehicles. — Defective notice of cancellation to the insured can result in ineffective termination of the policy and thus in continued coverage by the insurer; however, this is not true when the defective notice is directed to the Division of Motor Vehicles. Allstate Ins. Co. v. McCrae, 325 N.C. 411, 384 S.E.2d 1 (1989), decided under law in effect prior to 1984 amendment.

Payments authorized by G.S. 20-309(e) are in the nature of sanctions and are thus subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

Civil Penalty as Exclusive Sanction for Defective Notice of Cancellation to Division of Motor Vehicles. — The General Assembly appears to have intended that the civil penalty be the exclusive sanction for failure to give the Division of Motor Vehicles the required notice of termination. Allstate Ins. Co. v. McCrae, 325 N.C. 411, 384 S.E.2d 1 (1989), decided under law in effect prior to 1984 amendment.

Policy Violations a Defense Prior to January 1, 1958. — As to accidents occurring prior to the effective date (January 1, 1958) of this Article, policy violations constitute a valid and complete defense as to the insurer. Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960).

Applied in Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962); Lofquist v. Allstate Ins. Co., 263 N.C. 615, 140 S.E.2d 12 (1965); Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695 (1985).

Cited in High Point Sav. & Trust Co. v. King, 253 N.C. 571, 117 S.E.2d 421 (1960); Fidelity & Cas. Co. v. Jackson, 297 F.2d 230 (4th Cir. 1961); Smart Fin. Co. v. Dick, 256 N.C. 669, 124 S.E.2d 862 (1962); Griffin v. Hartford Accident & Indem. Co., 264 N.C. 212, 141 S.E.2d 300 (1965); Hayes v. Hartford Accident & Indem. Co., 274 N.C. 73, 161 S.E.2d 552 (1968); Grant v. State Farm Mut. Auto. Ins. Co., 1 N.C. App. 76, 159 S.E.2d 368 (1968); Nationwide Mut. Ins. Co. v. Hayes, 276 N.C. 620, 174 S.E.2d 511 (1970); In re North Carolina Auto. Rate Admin. Office, 278 N.C. 302, 180 S.E.2d 155 (1971); State ex rel. Hunt v. North Carolina Reinsurance Facility, 49 N.C. App. 206, 271 S.E.2d 302 (1980); Shew v. Southern Fire & Cas. Co., 58 N.C. App. 637, 294 S.E.2d 233 (1982); Ohio Cas. Ins. Co. v. Anderson, 59 N.C. App. 621, 298 S.E.2d 56 (1982); Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984); Smith v. Nationwide Mut. Ins. Co., 315 N.C. 262, 337 S.E.2d 569 (1985); N.C. Farm Bureau Mut. Ins. Co. v. Simpson, — N.C. App. —, 678 S.E.2d 753, 2009 N.C. App. LEXIS 1087 (July 7, 2009).

§ 20-309.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 28.

§ 20-309.2. Insurer shall notify Division of actions on insurance policies.

(a) Notice Required. — An insurer shall notify the Division upon any of the following with regard to a motor vehicle liability policy:

(1) Issues a new or replacement policy.

(2) Terminates a policy, either by cancellation or failure to renew, unless the same insurer issues a replacement policy complying with this Article at the same time the insurer terminates the old policy and no lapse in coverage results.

(3) Reinstates a policy after the insurer has notified the Division of a cancellation or termination.

(b) Time Period. — An insurer shall notify the Division as required by subsection (a) of this section within 20 business days.

(c) Form of Notice. — Any insurer with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume shall submit the notices required under this section by electronic means. All other insurers may submit the notices required under this section by either paper or electronic means.

(d) Trade Secret Protection. — The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by an insurer under this section constitutes a designated trade secret under G.S. 132-1.2.

(e) Civil Penalty. — The Commissioner of Insurance may assess a civil penalty of two hundred dollars ($200.00) against an insurer that fails to notify the Division as required by this section. The Commissioner may waive the penalty if the insurer establishes good cause for the failure.

(f) Clear Proceeds of Penalties. — The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2006-213, s. 1; 2007-484, s. 7(b).)

Editor's Note. — Session Laws 2006-213, s. 6, makes this section effective July 1, 2008, and applicable to lapses occurring on or after that date.

Session Laws 2007-484, s. 7(e), provides: "This section is effective on the effective date of S.L. 2006-213 [July 1, 2008] and applies to lapses occurring on or after that date."

Effect of Amendments. — Session Laws 2007-484, s. 7(b), added subsection (f). For effective date and applicability, see Editor's note.

§ 20-310: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 29.

Cross References. — This section was repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 29, effective February 1, 1995. For provisions concerning termination of a nonfleet private passenger motor vehicle insurance policy effective February 1, 1995, see G.S. 58-36-85.

§ 20-310.1: Repealed by Session Laws 1963, c. 964, s. 3.

§ 20-310.2: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31.

Cross References. — This section was repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995. For provisions concerning termination of a nonfleet private passenger motor vehicle insurance policy effective February 1, 1995, see G.S. 58-36-85.

§ 20-311. Action by the Division when notified of a lapse in financial responsibility.

(a) Action. — When the Division receives evidence, by a notice of termination of a motor vehicle liability policy or otherwise, that the owner of a motor vehicle registered or required to be registered in this State does not have financial responsibility for the operation of the vehicle, the Division shall send the owner a letter. The letter shall notify the owner of the evidence and inform the owner that the owner shall respond to the letter within 10 days of the date on the letter and explain how the owner has met the duty to have continuous financial responsibility for the vehicle. Based on the owner's response, the Division shall take the appropriate action listed:

(1) Division correction. — If the owner responds within the required time and the response establishes that the owner has not had a lapse in financial responsibility, the Division shall correct its records.

(2) Penalty only. — If the owner responds within the required time and the response establishes all of the following, the Division shall assess the owner a penalty in the amount set in subsection (b) of this section:
  a. The owner had a lapse in financial responsibility, but the owner now has financial responsibility.
  b. The vehicle was not involved in an accident during the lapse in financial responsibility.
  c. The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.

(3) Penalty and revocation. — If the owner responds within the required time and the response establishes any of the following, the Division shall assess the owner a penalty in the amount set in subsection (b) of this section and revoke the registration of the owner's vehicle for the period set in subsection (c) of this section:
  a. The owner had a lapse in financial responsibility and still does not have financial responsibility.
  b. The owner now has financial responsibility even though the owner had a lapse, but the vehicle was involved in an accident during the lapse, the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle, or both.

(4) Revocation pending response. — If the owner does not respond within the required time, the Division shall revoke the registration of the owner's vehicle for the period set in subsection (c) of this section. When the owner responds, the Division shall take the appropriate action listed in subdivisions (1) through (3) of this subsection as if the response had been timely.

(b) Penalty Amount. — The following table determines the amount of a penalty payable under this section by an owner who has had a lapse in financial responsibility; the amount is based on the number of times the owner has been assessed a penalty under this section during the three-year period before the date the owner's current lapse began:

Number of Lapses in Previous Three Years	Penalty Amount
None	$50.00
One	$100.00
Two or More	$150.00

(c) Revocation Period. — The revocation period for a revocation based on a response that establishes that a vehicle owner does not have financial responsibility is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility.

The revocation period for a revocation based on a response that establishes the occurrence of an accident during a lapse in financial responsibility or the knowing operation of a vehicle without financial responsibility is 30 days. The revocation period for a revocation based on failure of a vehicle owner to respond is indefinite and ends when the owner responds.

(d) Revocation Notice. — When the Division revokes the registration of an owner's vehicle, it shall notify the owner of the revocation. The notice shall inform the owner of the following:

(1) That the owner shall return the vehicle's registration plate and registration card to the Division, if the owner has not done so already, and that failure to do so is a Class 2 misdemeanor under G.S. 20-45.

(2) That the vehicle's registration plate and registration card are subject to seizure by a law enforcement officer.

(3) That the registration of the vehicle cannot be renewed while the registration is revoked.

(4) That the owner shall pay any penalties assessed, a restoration fee, and the fee for a registration plate when the owner applies to the Division to register a vehicle whose registration was revoked.

(e) Registration After Revocation. — A vehicle whose registration has been revoked may not be registered during the revocation period in the name of the owner, a child of the owner, the owner's spouse, or a child of the owner's spouse. This restriction does not apply to a spouse who is living separate and apart from the owner. At the end of a revocation period, a vehicle owner who has financial responsibility may apply to register a vehicle whose registration was revoked. The owner shall pay any penalty assessed, a restoration fee of fifty dollars ($50.00), and the fee for a registration plate.

(f) Clear Proceeds of Penalties. — The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) Notwithstanding the penalty and restoration fee provisions of this section, any monetary penalty or restoration fee shall be waived for any person who, at the time of notification of a lapse in coverage, was deployed as a member of the United States Armed Forces outside of the continental United States for a total of 45 or more days. In addition, no insurance points under the Safe Driver Incentive Plan shall be assessed for any violation for which a monetary penalty or restoration fee is waived pursuant to this subsection. Any person qualifying under this subsection shall:

(1) Have an affirmative defense to any criminal charge based upon the failure to return any registration card or registration plate to the Division;

(2) Upon reregistration, receive without cost from the Division all necessary registration cards or plates; and

(3) Upon notice of revocation, be permitted to transfer the vehicle's registration immediately to his or her spouse, child, or spouse's child, notwithstanding the provisions of subsection (e) of this section. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3; 1967, c. 822, s. 3; c. 857, s. 4; 1971, c. 477, s. 3; 1975, c. 348, s. 4; c. 716, s. 5; 1979, 2nd Sess., c. 1279, s. 2; 1983, c. 761, s. 147; 1983 (Reg. Sess., 1984), c. 1069, s. 2; 2006-213, s. 2; 2006-264, s. 38; 2007-484, ss. 7(c), (d).)

Editor's Note. — Subsection (g) was formerly codified as G.S. 20-309(h). It was recodified as G.S. 20-311(g) by Session Laws 2007-484, s. 7(d), which was effective on the effective date of Session Laws 2006-213 (July 1, 2008), and applicable to lapses occurring on or after that date.

Session Laws 2007-484, s. 7(e), provides: "This section is effective on the effective date of S.L. 2006-213 [July 1, 2008] and applies to lapses occurring on or after that date."

Effect of Amendments. — Session Laws 2006-213, s. 2, effective July 1, 2008, and applicable to lapses occurring on or after that date, rewrote the section.

Session Laws 2007-484, s. 7(c) and (d), added subsection (f), and recodified G.S. 20-309(h) as G.S. 20-311(g). For effective date and applicability, see Editor's note.

CASE NOTES

Cited in Griffin v. Hartford Accident & Indem. Co., 264 N.C. 212, 141 S.E.2d 300 (1965).

§ 20-312: Repealed by Session Laws 2006-213, s. 5, effective July 1, 2008, and applicable to lapses occurring on or after that date.

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

(a) On or after July 1, 1963, any owner of a motor vehicle registered or required to be registered in this State who shall operate or permit such motor vehicle to be operated in this State without having in full force and effect the financial responsibility required by this Article shall be guilty of a Class 1 misdemeanor.

(b) Evidence that the owner of a motor vehicle registered or required to be registered in this State has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Division of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G.S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this Article. (1957, c. 1393, s. 5; 1959, c. 1277, s. 3; 1963, c. 964, s. 5; 1975, c. 716, s. 5; 1993, c. 539, s. 388; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Failure to Prove Ownership. — State failed to adequately prove that defendant owned vehicle in question where the only evidence tending to prove his ownership was defendant's statement to a wrecker crew demanding that they not remove "his" car; such an "admission" was insufficient to prove ownership absent substantial independent evidence tending to establish its trustworthiness. State v. Harrell, 96 N.C. App. 426, 386 S.E.2d 103 (1989).

Applied in Underwood v. National Grange Mut. Liab. Co., 258 N.C. 211, 128 S.E.2d 577 (1962); State v. Green, 266 N.C. 785, 147 S.E.2d 377 (1966).

Cited in Griffin v. Hartford Accident & Indem. Co., 264 N.C. 212, 141 S.E.2d 300 (1965); State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984); State v. Golden, 96 N.C. App. 249, 385 S.E.2d 346 (1989); State v. Washington, — N.C. App. —, 668 S.E.2d 622, 2008 N.C. App. LEXIS 2019 (2008).

§ 20-313.1. Making false certification or giving false information a misdemeanor.

(a) Any owner of a motor vehicle registered or required to be registered in this State who shall make a false certification concerning his financial responsibility for the operation of such motor vehicle shall be guilty of a Class 1 misdemeanor.

(b) Any person, firm, or corporation giving false information to the Division concerning another's financial responsibility for the operation of a motor vehicle registered or required to be registered in this State, knowing or having reason to believe that such information is false, shall be guilty of a Class 1 misdemeanor. (1963, c. 964, s. 6; 1975, c. 716, s. 5; 1993, c. 539, s. 389; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-314. Applicability of Article 9A; its provisions continued.

The provisions of Article 9A, Chapter 20 of the General Statutes, as amended, which pertain to the method of giving and maintaining proof of financial responsibility and which govern and define "motor vehicle liability policy" and assigned risk plans shall apply to filing and maintaining proof of financial responsibility required by this Article. It is intended that the provisions of Article 9A, Chapter 20 of the General Statutes, as amended, relating to proof of financial responsibility required of each operator and each owner of a motor vehicle involved in an accident, and relating to nonpayment of a judgment as defined in G.S. 20-279.1, shall continue in full force and effect. (1957, c. 1393, s. 6; 1963, c. 964, s. 7.)

CASE NOTES

Owner Must Show Proof of Financial Responsibility as Prerequisite to Registration. — This Article requires every owner of a motor vehicle, as a prerequisite to the registration thereof, to show "proof of financial responsibility" in the manner prescribed by the Motor Vehicle Safety and Financial Responsibility Act of 1953, Chapter 20, Article 9A. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

Insurance policies and insurers' certificates required by both Article 9A of this Chapter and this Article, are defined by Article 9A. Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961).

Section 20-279.34 is incorporated by reference into the Financial Responsibility Act of 1957 by this section. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

This section does not incorporate § 20-279.22 in this Article. Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961).

Cited in Swain v. Nationwide Mut. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 (1960); Nixon v. Liberty Mut. Ins. Co., 258 N.C. 41, 127 S.E.2d 892 (1962); Daniels v. Nationwide Mut. Ins. Co., 258 N.C. 660, 129 S.E.2d 314 (1963).

§ 20-315. Commissioner to administer Article; rules and regulations.

The Commissioner of Motor Vehicles shall administer and enforce the provisions of this Article relating to registration of motor vehicles and may make necessary rules and regulations for its administration. (1957, c. 1393, s. 7.)

CASE NOTES

Cited in Levinson v. Travelers Indem. Co., 258 N.C. 672, 129 S.E.2d 297 (1963); GEICO v. Lumbermens Mut. Cas. Co., 269 N.C. 354, 152 S.E.2d 445 (1967).

§ 20-316. Divisional hearings upon lapse of liability insurance coverage.

Any person whose registration plate has been revoked under G.S. 20-311 may request a hearing. Upon receipt of such request, the Division shall, as early as practical, afford an opportunity for hearing. At the hearing the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division shall withdraw its order of revocation and such person may retain the registration plate. Otherwise, the order of revocation shall be affirmed and the registration plate surrendered. (1971, c. 1218, s. 1; 1973, c. 1144, ss. 1, 2; 1975, c. 716, s. 5; 2006-213, s. 3.)

Effect of Amendments. — Session Laws 2006-213, s. 3, effective July 1, 2008, and applicable to lapses occurring on or after that date, in the first sentence, deleted "20-309(e) or" following "under G.S."; in the second sentence, deleted "him" preceding "an opportunity"; and in the third sentence, substituted "At the" for "Upon such."

§ 20-316.1: Repealed by Session Laws 2006-213, s. 5, effective July 1, 2008, and applicable to lapses occurring on or after that date.

§ 20-317. Insurance required by any other law; certain operators not affected.

This Article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Article, may be certified as proof of financial responsibility under this Article. This Article applies to vehicles of motor carriers required to register with the Division under G.S. 20-382 or G.S. 20-382.1 only to the extent that the amount of financial responsibility required by this Article exceeds the amount required by the United States Department of Transportation. (1957, c. 1393, s. 9; 1959, c. 1252, s. 1; 1975, c. 716, s. 5; 1995 (Reg. Sess., 1996), c. 756, s. 19.)

§ 20-318. Federal, State and political subdivision vehicles excepted.

This Article does not apply to any motor vehicle owned by the State of North Carolina or by a political subdivision of the State, nor to any motor vehicle owned by the federal government. (1957, c. 1393, s. 10.)

§ 20-319. Effective date.

This Article shall be effective from and after January 1, 1958. (1957, c. 1393, s. 12; 1961, c. 276.)

Legal Periodicals. — For note on the State's inability to suspend the driver's license of a bankrupt who fails to satisfy an accident judgment debt, see 50 N.C.L. Rev. 350 (1972).

CASE NOTES

Cited in Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961); Grant v. State Farm Mut. Auto. Ins. Co., 1 N.C. App. 76, 159 S.E.2d 368 (1968).

ARTICLE 13A.

Certification of Automobile Insurance Coverage by Insurance Companies.

§ 20-319.1. Company to forward certification within seven days after receipt of request.

Upon the receipt by an insurance company at its home office of a registered letter from an insured requesting that it certify to the North Carolina Division of Motor Vehicles whether or not a previously issued policy of automobile liability insurance was in full force and effect on a designated day, it shall be the duty of such insurance company to forward such certification within seven days. (1967, c. 908, s. 1; 1975, c. 716, s. 5.)

§ 20-319.2. Penalty for failure to forward certification.

If any insurance company shall without good cause fail to forward said certification within seven days after its receipt of such registered letter, the North Carolina Commissioner of Insurance shall be authorized in his discretion to impose a civil penalty upon said company in the amount of two hundred dollars ($200.00) for such violation. (1967, c. 908, s. 2.)

ARTICLE 14.

Driver Training School Licensing Law.

§ 20-320. Definitions.

As used in this Article:

(1) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership or corporation which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination given by the State for a driver's license or learner's permit, and charges a consideration or tuition for such service or materials.

(2) "Commissioner" means the Commissioner of Motor Vehicles.

(3) "Instructor" means any person who operates a commercial driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a commercial driver training school. (1965, c. 873; 1979, c. 667, s. 39.)

CASE NOTES

Cited in Charlotte Truck Driver Training School, Inc. v. North Carolina DMV, 95 N.C. App. 209, 381 S.E.2d 861 (1989).

§ 20-321. Enforcement of Article by Commissioner.

(a) The Commissioner shall adopt and prescribe such regulations concerning the administration and enforcement of this Article as are necessary to protect the public. The Commissioner or his authorized representative shall have the duty of examining applicants for commercial driver training schools and instructor's licenses, licensing successful applicants, and inspecting school facilities, records, and equipment.

(b) The Commissioner shall administer and enforce the provisions of this Article, and may call upon the State Superintendent of Public Instruction for assistance in developing and formulating appropriate regulations. (1965, c. 873; 1973, c. 1331, s. 3; 1987, c. 69; c. 827, § 3.)

§ 20-322. Licenses for schools necessary; regulations as to requirements.

(a) No commercial driver training school shall be established nor any such existing school be continued on or after July 1, 1965, unless such school applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. A driver education course offered to prepare an individual for a limited learner's permit or another provisional license must meet the requirements set in G.S. 20-88.1 for the program of driver education offered in the public schools. (1965, c. 873; 1997-16, s. 4; 1997-443, s. 32.20.)

Editor's Note. — Session Laws 1997-16, s. 10 provides that this act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

§ 20-323. Licenses for instructors necessary; regulations as to requirements.

(a) No person shall act as an instructor on or after July 1, 1965, unless such person applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

(b) Regulations adopted by the Commissioner shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, knowledge of the motor vehicle laws and safety principles, previous personal and employment records, and such other matters as the Commissioner may prescribe, for the protection of the public. (1965, c. 873.)

§ 20-324. Expiration and renewal of licenses; fees.

(a) Renewal. — A license issued under this Article expires two years after the date the license is issued. To renew a license, the license holder must file an application for renewal with the Division.

(b) Fees. — An application for an initial license or the renewal of a license must be accompanied by the application fee for the license. The application fee for a school license is eighty dollars ($80.00). The application fee for an instructor license is sixteen dollars ($16.00). The application fee for a license is not refundable. Fees collected under this section must be credited to the Highway Fund. (1965, c. 873; 1977, c. 802, s. 9; 1981, c. 690, s. 15; 1997-33, s. 1.)

§ 20-325. Cancellation, suspension, revocation, and refusal to issue or renew licenses.

The Commissioner may cancel, suspend, revoke, or refuse to issue or renew a school or instructor's license in any case where he finds the licensee or applicant has not complied with, or has violated any of the provisions of this Article or any regulation adopted by the Commissioner hereunder. A suspended or revoked license shall be returned to the Commissioner by the licensee, and its holder shall not be eligible to apply for a license under this Article until 12 months have elapsed since the date of such suspension or revocation. (1965, c. 873.)

§ 20-326. Exemptions from Article.

The provisions of this Article shall not apply to any person giving driver training lessons without charge, to employers maintaining driver training schools without charge for their employees only, or to schools or classes conducted by colleges, universities and high schools. (1965, c. 873.)

§ 20-327. Penalties for violating Article or regulations.

Violation of any provision of this Article or any regulation promulgated pursuant hereto, shall constitute a Class 3 misdemeanor. (1965, c. 873; 1993, c. 539, s. 390; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-328. Administration of Article.

This Article shall be administered by the Division of Motor Vehicles with no additional appropriations. (1965, c. 873; 1973, c. 440; 1975, c. 716, s. 5.)

§§ 20-329 through 20-339: Reserved for future codification purposes.

ARTICLE 15.

Vehicle Mileage Act.

§ 20-340. Purpose.

This Article shall provide State remedies for persons injured by motor vehicle odometer alteration, and to provide purchasers of motor vehicles with information to assist them in determining the condition and value of such vehicles. Such remedies shall be in addition to remedies provided by the federal odometer law (Motor Vehicle Information and Cost Savings Act, Public Law 92-513, 86 Stat. 947, enacted October 20, 1972). (1973, c. 679, s. 1.)

CASE NOTES

Cited in Miller v. Triangle Volkswagen, Inc., 55 N.C. App. 593, 286 S.E.2d 608 (1982); Washburn v. Vandiver, 93 N.C. App. 657, 379 S.E.2d 65 (1989).

§ 20-341. Definitions.

As used in this Article:

(1) The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but

shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(2) The term "repair and replacement" means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

(3) The term "transfer" means to change ownership by purchase, gift, or any other means.

(4) The term "transferee" means any person to whom the ownership in a motor vehicle is transferred or any person who, as agent, accepts transfer of ownership in a motor vehicle for another by purchase, gift, or any means other than by creation of a security interest.

(5) The term "transferor" means any person who or any person who, as agent, transfers his ownership in a motor vehicle by sale, gift or any means other than by creation of a security interest.

(6) The term "lessee" means any person, or the agent for any person, to whom a motor vehicle has been leased for a term of at least four months.

(7) The term "lessor" means any person, or the agent for any person, who has leased five or more vehicles in the past 12 months.

(8) The term "mileage" means the actual distance that a vehicle has traveled. (1973, c. 679, s. 1; 1989, c. 482, s. 1.)

§ 20-342. Unlawful devices.

It is unlawful for any person knowingly to advertise for sale, to sell, to use, or to install or to have installed, any device which causes an odometer to register any mileage other than the true mileage driven. For the purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance. (1973, c. 679, s. 1.)

§ 20-343. Unlawful change of mileage.

It is unlawful for any person or his agent to disconnect, reset, or alter the odometer of any motor vehicle with the intent to change the number of miles indicated thereon. Whenever evidence shall be presented in any court of the fact that an odometer has been reset or altered to change the number of miles indicated thereon, it shall be prima facie evidence in any court in the State of North Carolina that the resetting or alteration was made by the person, firm or corporation who held title or by law was required to hold title to the vehicle in which the reset or altered odometer was installed at the time of such resetting or alteration or if such person has more than 20 employees and has specifically and in writing delegated responsibility for the motor vehicle to an agent, that the resetting or alteration was made by the agent. (1973, c. 679, s. 1; 1979, c. 696.)

CASE NOTES

Effect of 1979 Amendment. — The 1979 amendment, which added the second sentence to this section, is a procedural statute establishing a prima facie case upon the presentation of the required evidence; it does not alter the substantive law but is solely procedural, not affecting any vested rights of defendant. Duffer v. Royal Dodge, Inc., 51 N.C. App. 129, 275 S.E.2d 206 (1981).

Odometer alteration prohibited by this section is a violation of motor vehicle laws of North Carolina as that term is used in G.S. 20-28.1(c). Evans v. Roberson, 314 N.C. 315, 333 S.E.2d 228 (1985).

§ 20-344. Operation of vehicle with intent to defraud.

It is unlawful for any person with the intent to defraud to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional. (1973, c. 679, s. 1.)

§ 20-345. Conspiracy.

No person shall conspire with any other person to violate G.S. 20-342, 20-343, 20-344, 20-346, 20-347, or 20-347.1. (1973, c. 679, s. 1; 1989, c. 482, s. 7.)

§ 20-346. Lawful service, repair, or replacement of odometer.

Nothing in this Article shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be unlawful. (1973, c. 679, s. 1.)

CASE NOTES

Applied in Roberts v. Buffaloe, 43 N.C. App. 368, 258 S.E.2d 861 (1979).

Cited in Miller v. Triangle Volkswagen, Inc, 55 N.C. App. 593, 286 S.E.2d 608 (1982); McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

§ 20-347. Disclosure requirements.

(a) In connection with the transfer of a motor vehicle, the transferor shall disclose the mileage to the transferee in writing on the title or on the document used to reassign the title. This written disclosure must be signed by the transferor, including the printed name, and shall contain the following information:

(1) The odometer reading at the time of the transfer (not to include tenths of miles);
(2) The date of the transfer;
(3) The transferor's name and current address;
(3a) The transferee's printed name, signature and current address;
(4) The identity of the vehicle, including its make, model, body type, and vehicle identification number, and the license plate number most recently used on the vehicle; and
(5) Certification by the transferor that to the best of his knowledge the odometer reading
  a. Reflects the actual mileage; or
  b. Reflects the amount of mileage in excess of the designed mechanical odometer limit; or
  c. Does not reflect the actual mileage and should not be relied on.
(6), (7) Repealed by Session Laws 1989, c. 482, s. 2.

(a1) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide written disclosure to the lessor regarding mileage. In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement signed by the lessee containing the following information:

(1) The printed name of the person making the disclosure;
(2) The current odometer reading (not to include tenths of miles);
(3) The date of the statement;
(4) The lessee's printed name and current address;
(5) The lessor's printed name, signature, and current address;
(6) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number;
(7) The date that the lessor notified the lessee of the disclosure requirements and the date the lessor received the completed disclosure statement; and
(8) Certification by the lessee that to the best of his knowledge the odometer reading:
  a. Reflects the actual mileage;
  b. Reflects the amount of mileage in excess of the designed mechanical odometer limit; or
  c. Does not reflect the actual mileage and should not be relied on.

If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under this subsection, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(b) Repealed by Session Laws 1973, c. 1088.

(c) It shall be unlawful for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules.

(d) The provisions of this disclosure statement section shall not apply to the following transfers:

(1) A vehicle having a gross vehicle weight rating of more than 16,000 pounds.
(2) A vehicle that is not self-propelled.
(2a) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.
(3) A vehicle that is 10 years old or older.
(4) A new vehicle prior to its first transfer for purposes other than resale.
(5) A vehicle that is transferred by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad. (1973, c. 679, s. 1; c. 1088; 1983, c. 387; 1989, c. 482, ss. 2-5; 1993, c. 553, s. 11; 2009-550, s. 2(d).)

Effect of Amendments. — Session Laws 2009-550, s. 2(d), effective August 28, 2009, added subdivision (d)(5) and made related changes.

CASE NOTES

In order to establish liability under this section and § 20-348, the plaintiff must show (1) that the seller had either actual or constructive knowledge that the odometer was materially incorrect, and (2) that the seller acted with gross negligence or recklessness. McCraken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Recovery pursuant to this section and G.S. 20-348 imposes no requirement to allege each element of fraud. However, plaintiff must show that defendant's failure to comply with the disclosure requirements was more than a technical failure; the noncompliance must have been induced by an intent to defraud. Schon v. Beeker, 94 N.C. App. 738, 381 S.E.2d 464 (1989).

Intent to Defraud Found Where Dealer Had Reason to Question Odometer Mileage. — The dealer acted with the intent to defraud, where the evidence showed that the dealer had some question as to the verity of the odometer mileage, yet all it did to confirm the mileage was to drive the vehicle, examine the interior and compare the mileage on the inspection sticker with the mileage on the odometer, and the evidence also showed that any mechanic could ascertain from the grease buildup on the chassis that the vehicle had been driven more than the number of miles shown on the odometer, that several pieces of equipment, most noticeably the tires, were not of the original brand, and that the truck showed other signs of wear. To allow a dealer with expertise to ignore such indicators of wear would be to eviscerate the purpose of the statute. Levine v. Parks Chevrolet, Inc., 76 N.C. App. 44, 331 S.E.2d 747, cert. denied, 315 N.C. 184, 337 S.E.2d 858 (1985).

For example of a complaint sufficient to allege a cause of action based upon this section and G.S. 20-348, see Schon v. Beeker, 94 N.C. App. 738, 381 S.E.2d 464 (1989).

Applied in Roberts v. Buffaloe, 43 N.C. App. 368, 258 S.E.2d 861 (1979); Duffer v. Royal Dodge, Inc., 51 N.C. App. 129, 275 S.E.2d 206 (1981).

Cited in United States v. Cotoia, 785 F.2d 497 (4th Cir. 1986).

§ 20-347.1. Odometer disclosure record retention.

(a) Dealers and distributors of motor vehicles who are required by this Part to execute an odometer disclosure statement shall retain, for five years, a photostat, carbon, or other facsimile copy of each odometer mileage statement which they issue or receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(c) Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

(1) The name of the most recent owner (other than the auction company);
(2) The name of the buyer;
(3) The vehicle identification number; and
(4) The odometer reading on the date which the auction company took possession of the motor vehicle.

(d) Records required to be kept under this section shall be open to inspection and copying by law enforcement officers of the Division in order to determine compliance with this Article. (1989, c. 482, s. 6.)

§ 20-348. Private civil action.

(a) Any person who, with intent to defraud, violates any requirement imposed under this Article shall be liable in an amount equal to the sum of:

(1) Three times the amount of actual damages sustained or one thousand five hundred dollars ($1,500), whichever is the greater; and
(2) In the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section may be brought in any court of the trial division of the General Court of Justice of the State of North Carolina within four years from the date on which the liability arises. (1973, c. 679, s. 1; 1981 (Reg. Sess., 1982), c. 1280, s. 1.)

CASE NOTES

In order to establish liability under § 20-347 and this section, the plaintiff must show (1) that the seller had either actual or constructive knowledge that the odometer was materially incorrect, and (2) that the seller acted with gross negligence or recklessness. McCraken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

To make out a prima facie case under subsection (a) of this section, a plaintiff must establish (1) a violation of a requirement imposed under this Article, (2) that was made with the intent to defraud. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Constructive knowledge that the odometer is incorrect is established upon proof that the transferor either (a) recklessly disregarded indications that it was incorrect, or (b) in the exercise of reasonable care, should have known the odometer was incorrect. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Intent to Defraud Essential to Action for Damages. — There must be more than a technical failure to comply in order to give rise to an action for damages under the Vehicle Mileage Act. The noncompliance must be accompanied by an intent to defraud. American Imports, Inc. v. G.E. Employees W. Region Fed. Credit Union, 37 N.C. App. 121, 245 S.E.2d 798 (1978).

Although knowledge of an incorrect odometer reading may, in some cases, be evidence of gross negligence or recklessness, a mere negligent violation of a disclosure requirement or even a knowing violation cannot support a private cause of action under subsection (a) of this section, absent evidence sufficient to demonstrate an intent to defraud. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

It was not error for the trial court to award plaintiffs $1,500 on each of the odometer statute violations since the issues submitted included a question of defendant's intent and the court properly explained the meaning of an intent to defraud to the jury. Washburn v. Vandiver, 93 N.C. App. 657, 379 S.E.2d 65 (1989).

Recovery pursuant to this section and G.S. 20-347 imposes no requirement to allege each element of fraud. However, plaintiff must show that defendant's failure to comply with the disclosure requirements was more than a technical failure; the noncompliance must have been induced by an intent to defraud. Schon v. Beeker, 94 N.C. App. 738, 381 S.E.2d 464 (1989).

In order to properly plead a cause of action under G.S. 20-71.4(a), and 20-348(a), a plaintiff must allege fraudulent intent in addition to a violation of the disclosure provisions of G.S. 20-71.4(a). Bowman v. Alan Vester Ford Lincoln Mercury, 151 N.C. App. 603, 566 S.E.2d 818, 2002 N.C. App. LEXIS 886 (2002).

Where plaintiff seeks treble damages and punitive damages in an action against defendant car dealer in which he alleges that defendant sold him a car and alleged that the odometer reading was accurate when he knew that the true mileage was far in excess of that shown on the odometer, plaintiff's prayer for punitive damages cannot be sustained, even if the jury answers the liability issue in favor of plaintiff. Plaintiff's recovery, if any, will be the greater of three times his actual damages or $1,500, costs and reasonable attorneys' fees as determined by the court. Roberts v. Buffaloe, 43 N.C. App. 368, 258 S.E.2d 861 (1979).

Plaintiff Must Elect Remedies. — Pursuant to the doctrine of election of remedies, a party may not recover twice based on the same conduct; trial court erred in awarding the buyers in a used car purchase transaction treble damages under both G.S. 20-348(a) and G.S. ch. 75. Blankenship v. Town & Country Ford, Inc., 174 N.C. App. 764, 622 S.E.2d 638, 2005 N.C. App. LEXIS 2616 (2005).

Assessment of damages on both an unfair trade practices claim and odometer statute violations did not amount to a double recovery since an action for unfair or deceptive acts or practices is a distinct action apart from fraud, breach of contract, or violation of state and federal odometer statutes; where jury concluded that plaintiffs had been damaged in the amount of $1,300 pursuant to the unfair trade practices claim and the trial court then trebled this amount and where the trial court then assessed $1,500 on each of the odometer statute violations as required by statute plaintiffs were not awarded double recovery. Washburn v. Vandiver, 93 N.C. App. 657, 379 S.E.2d 65 (1989).

For example of a complaint sufficient to allege a cause of action based upon G.S. 20-347 and this section, see Schon v. Beeker, 94 N.C. App. 738, 381 S.E.2d 464 (1989).

Defendants committed unfair and deceptive trade practices where car sold by defendants was severely structurally damaged, was not safe to operate, and plaintiff was misled by defendants into believing otherwise. Huff v. Autos Unlimited, Inc., 124 N.C. App. 410, 477 S.E.2d 86 (1996), cert. denied, 346 N.C. 279, 486 S.E.2d 546 (1997).

Evidence Held Insufficient. — Under the evidence, there was no more than a suspicion that defendant was grossly negligent or recklessly disregarded any indications that truck had been driven more than 19,000 miles in 14 months, and judgment under subsection (a) of this section would be reversed. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Applied in Levine v. Parks Chevrolet, Inc., 76 N.C. App. 44, 331 S.E.2d 747 (1985); Payne v. Parks Chevrolet, Inc., 119 N.C. App. 383, 458 S.E.2d 716 (1995).

Cited in Wilson v. Sutton, 124 N.C. App. 170, 476 S.E.2d 467 (1996); Blankenship v. Town & Country Ford, Inc., 155 N.C. App. 161, 574 S.E.2d 132, 2002 N.C. App. LEXIS 1599 (2002).

§ 20-349. Injunctive enforcement.

Upon petition by the Attorney General of North Carolina, a violation of this Article may be enjoined as an unfair and deceptive trade practice, as prohibited by G.S. 75-1.1. (1973, c. 679, s. 1.)

CASE NOTES

Intent to Defraud Not Required. — Intent to defraud the plaintiff is not required in an action for injunctive relief against a violator under this section, or to impose misdemeanor criminal penalties under G.S. 20-350, although both of these statutes require proof of knowledge by the transferor. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

§ 20-350. Criminal offense.

Any person, firm or corporation violating G.S. 20-343 shall be guilty of a Class I felony. A violation of any remaining provision of this Article shall be a Class 1 misdemeanor. (1973, c. 679, s. 1; 1989, c. 482, s. 7.1; 1993, c. 539, ss. 391, 1262; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Intent to Defraud Not Required. — Intent to defraud the plaintiff is not required in an action for injunctive relief against a violator under G.S. 20-349, or to impose misdemeanor criminal penalties under this section, although both of these statutes require proof of knowledge by the transferor. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986) (decided prior to 1993 amendment).

Cited in Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984).

ARTICLE 15A.

New Motor Vehicles Warranties Act.

§ 20-351. Purpose.

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties. (1987, c. 385, s. 1.)

Legal Periodicals. — For note on North Carolina's automobile warranty legislation, see 66 N.C.L. Rev. 1080 (1988).

CASE NOTES

Legislative Intent — Effective Date. — The legislature did not express the intent that G.S. 20-351 to 351.10 be applied retroactively; nor is there any clear implication from the statute that the legislature intended to apply the statute retroactively. Instead, the legislature passed the statute in June of 1987 and made its intention clear that the statute become effective in October of 1987. Estridge v. Ford Motor Co., 101 N.C. App. 716, 401 S.E.2d 85 (1991), cert. denied, 329 N.C. 267, 404 S.E.2d 867 (1991).

Act is Inapplicable to Leases Executed Prior to Effective Date. — Plaintiff's claim based on the New Motor Vehicles Warranties Act was properly dismissed even though no defects existed prior to the enactment of statute. Application of "Lemon Law" to lease executed prior to effective date of statute is retroactive and improper, without legislative intent for retroactive application. Estridge v. Ford Motor Co., 101 N.C. App. 716, 401 S.E.2d 85 (1991), cert. denied, 329 N.C. 267, 404 S.E.2d 867 (1991).

Manufacturer's deficient disclosure regarding the necessity of a written notification of nonconformity relieved plaintiff from the written notice requirement as well as the requirement that the manufacturer be allowed a reasonable time to make repairs; therefore, defendant manufacturer was not entitled to summary judgment on plaintiff's claim under the New Vehicles Act. Anders v. Hyundai Motor Am. Corp., 104 N.C. App. 61, 407 S.E.2d 618, cert. denied, 330 N.C. 440, 412 S.E.2d 69 (1991).

The Lemon Law has several purposes; it protects consumers who purchase defective new vehicles, it encourages private settlement between consumers and manufacturers, and it seeks a fair result that neither unduly benefits nor unduly burdens either party to a dispute. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

Applied in Adventure Travel World, Ltd. v. GMC, 107 N.C. App. 573, 421 S.E.2d 173 (1992).

§ 20-351.1. Definitions.

As used in this Article:

(1) "Consumer" means the purchaser, other than for purposes of resale, or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty.

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina.

(3) "Motor vehicle" includes a motor vehicle as defined in G.S. 20-4.01 that is sold or leased in this State, but does not include "house trailer" as defined in G.S. 20-4.01 or any motor vehicle that weighs more than 10,000 pounds.

(4) "New motor vehicle" means a motor vehicle for which a certificate of origin, as required by G.S. 20-52.1 or a similar requirement in another state, has never been supplied to a consumer, or which a manufacturer, its agent, or its authorized dealer states in writing is being sold as a new motor vehicle. (1987, c. 385, s. 1; 1989, c. 43, s. 2; c. 519, s. 2; 2005-436, s. 1.)

Editor's Note. — Subdivision (3), as rewritten by Session Laws 2005-436, s. 1, effective October 1, 2005, is applicable to contracts entered into on or after that date.

CASE NOTES

Cited in Anders v. Hyundai Motor Am. Corp., 104 N.C. App. 61, 407 S.E.2d 618 (1991); Taylor v. Volvo N. Am. Corp., 107 N.C. App. 678, 421 S.E.2d 617 (1992); Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.2. Require repairs; when mileage warranty begins to accrue.

(a) Express warranties for a new motor vehicle shall remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a period of one year, or the term of the express warranties, whichever is greater, following the date of original delivery of the motor vehicle to the consumer, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the applicable warranty period.

(b) Any express warranty for a new motor vehicle expressed in terms of a certain number of miles shall begin to accrue from the mileage on the odometer at the date of original delivery to the consumer. (1987, c. 385, s. 1; 1989, c. 14.)

CASE NOTES

A manufacturer's express warranties do not necessarily include that the vehicle will meet its owner's, or lessor's, expectations. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Cause of Nonconformity. — There is no statutory requirement that the buyer in all cases prove the cause of the nonconformity or identify any specific mechanical defect related to the nonconformity. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Although plaintiff did not show the precise mechanical defect within his braking system, he produced enough evidence to establish that shimmy and clicking were caused by a "defect" in the braking system; since, the warranty covered shimmying and clicking caused by a "defect," plaintiff's evidence was sufficient to support the trial court's finding that the shimmy and clicking constituted a nonconformity to, or breach of, the warranty. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Applied in Taylor v. Volvo N. Am. Corp., 107 N.C. App. 678, 421 S.E.2d 617 (1992).

Cited in Anders v. Hyundai Motor Am. Corp., 104 N.C. App. 61, 407 S.E.2d 618 (1991); Estridge v. Ford Motor Co., 101 N.C. App. 716, 401 S.E.2d 85 (1991).

§ 20-351.3. Replacement or refund; disclosure requirement.

(a) When the consumer is the purchaser or a person entitled by the terms of the express warranty to enforce the obligations of the warranty, if the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following:

(1) The full contract price including, but not limited to, charges for undercoating, dealer preparation and transportation, and installed options, plus the non-refundable portions of extended warranties and service contracts;

(2) All collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

(3) All finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and

(4) Any incidental damages and monetary consequential damages.

(b) When consumer is a lessee, if the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund the following:

(1) To the consumer:
  a. All sums previously paid by the consumer under the terms of the lease;
  b. All sums previously paid by the consumer in connection with entering into the lease agreement, including, but not limited to, any capitalized cost reduction, sales tax, license and registration fees, and similar government charges; and
  c. Any incidental and monetary consequential damages.

(2) To the lessor, a full refund of the lease price, plus an additional amount equal to five percent (5%) of the lease price, less eighty-five percent (85%) of the amount actually paid by the consumer to the lessor pursuant to the lease. The lease price means the actual purchase cost of the vehicle to the lessor.

In the case of a refund, the leased vehicle shall be returned to the manufacturer and the consumer's written lease shall be terminated by the lessor without any penalty to the consumer. The lessor shall transfer title of the motor vehicle to the manufacturer as necessary to effectuate the consumer's rights pursuant to this Article, whether the consumer chooses vehicle replacement or refund.

(c) Refunds shall be made to the consumer, lessor, and any lienholders as their interests may appear. The refund to the consumer shall be reduced by a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use is calculated from the number of miles used by the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The number of miles used by the consumer is multiplied by the purchase price of the vehicle or the lessor's actual lease price, and divided by 120,000.

(d) If a manufacturer, its agent, or its authorized dealer resells a motor vehicle that was returned pursuant to this Article or any other State's applicable law, regardless of whether there was any judicial determination that the motor vehicle had any defect or that it failed to conform to all express warranties, the manufacturer, its agent, or its authorized dealer shall disclose to the subsequent purchaser prior to the sale:

(1) That the motor vehicle was returned pursuant to this Article or pursuant to the applicable law of any other State; and

(2) The defect or condition or series of defects or conditions which substantially impaired the value of the motor vehicle to the consumer.

Any subsequent purchaser who purchases the motor vehicle for resale with notice of the return, shall make the required disclosures to any person to whom he resells the motor vehicle. (1987, c. 385, s. 1; 1989, c. 43, s. 1; c. 519, s. 1; 2005-436, s. 2.)

Editor's Note. — Subsection (c), as rewritten by Session Laws 2005-436, s. 2, effective October 1, 2005, is applicable to contracts entered into on or after that date.

CASE NOTES

A manufacturer's express warranties do not necessarily include that the vehicle will meet its owner's, or lessor's, expectations. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Construction with Other Provisions. —

The remedies provision, G.S. 20-351.8, by referring directly to this section, fully incorporates the amount and type of relief available at the consumer's option into a jury's calculation of monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

A consumer may not retain a vehicle for which he has received a refund under the Lemon Law whether the refund arises out of a request by the consumer pursuant to subsection (a) or out of a judgment for monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

Damage Caused by Non-Manufacturer Parts Were Excluded from the Manufacturer's Express Warranty Coverage. — Under the express warranty related to a vehicle lease, damage caused by non-manufacturer parts were excluded from the manufacturer's express warranty coverage and thus could not have been the basis of relief under the New Motor Vehicles Warranties Act, G.S. 20-351.3; an affidavit submitted by the lessee did not create a fact issue as to whether the maker of the device at issue was authorized by the manufacturer, as it did not indicate how affiant had personal knowledge, but, in contrast, affidavits submitted by the manufacturer stated that their information was based on the affiants' personal knowledge. Eugene Tucker Builders, Inc. v. Ford Motor Co., 175 N.C. App. 151, 622 S.E.2d 698, 2005 N.C. App. LEXIS 2727 (2005), cert. denied, — N.C. —, 630 S.E.2d 926 (2006).

Applied in Taylor v. Volvo N. Am. Corp., 107 N.C. App. 678, 421 S.E.2d 617 (1992).

Cited in Anders v. Hyundai Motor Am. Corp., 104 N.C. App. 61, 407 S.E.2d 618 (1991); Estridge v. Ford Motor Co., 101 N.C. App. 716, 401 S.E.2d 85 (1991).

§ 20-351.4. Affirmative defenses.

It is an affirmative defense to any claim under this Article that an alleged nonconformity or series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer or unauthorized modifications or alterations of a motor vehicle. (1987, c. 385, s. 1.)

CASE NOTES

Cited in Taylor v. Volvo N. Am. Corp., 107 N.C. App. 678, 421 S.E.2d 617 (1992).

§ 20-351.5. Presumption.

(a) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

(1) The same nonconformity has been presented for repair to the manufacturer, its agent, or its authorized dealer four or more times but the same nonconformity continues to exist; or

(2) The vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any 12-month period of the warranty,

provided that the consumer has notified the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities and allowed the manufacturer a reasonable period, not to exceed 15 calendar days, in which to correct the nonconformity or series of nonconformities. The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle and the manufacturer shall include in the warranty or owners manual the name and address where the written notification may be sent. Provided, further, that notice to the manufacturer shall not be required if the manufacturer fails to make the disclosures provided herein.

(b) The consumer may prove that a defect or condition substantially impairs the value of the motor vehicle to the consumer in a manner other than that set forth in subsection (a) of this section.

(c) The term of an express warranty, the one-year period, and the 20-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, strike, or natural disaster. (1987, c. 385, s. 1.)

CASE NOTES

Manufacturer's deficient disclosure regarding the necessity of a written notification of nonconformity relieved plaintiff from the written notice requirement as well as the requirement that the manufacturer be allowed a reasonable time to make repairs; therefore, defendant manufacturer was not entitled to summary judgment on plaintiff's claim under the New Vehicles Act. Anders v. Hyundai Motor Am. Corp., 104 N.C. App. 61, 407 S.E.2d 618, cert. denied, 330 N.C. 440, 412 S.E.2d 69 (1991).

Cited in Taylor v. Volvo N. Am. Corp., 107 N.C. App. 678, 421 S.E.2d 617 (1992).

§ 20-351.6. Civil action by the Attorney General.

Whenever, in his opinion, the interests of the public require it, it shall be the duty of the Attorney General upon his ascertaining that any of the provisions of this Article have been violated by the manufacturer to bring a civil action in the name of the State, or any officer or department thereof as provided by law, or in the name of the State on relation of the Attorney General. (1987, c. 385, s. 1.)

§ 20-351.7. Civil action by the consumer.

A consumer injured by reason of any violation of the provisions of this Article may bring a civil action against the manufacturer; provided, however, the consumer has given the manufacturer written notice of his intent to bring an action against the manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a manufacturer from requiring a consumer to utilize an informal settlement procedure prior to litigation if that procedure substantially complies in design and operation with the Magnuson-Moss Warranty Act, 15 USC § 2301 et seq., and regulations promulgated thereunder, and that requirement is written clearly and conspicuously, in the written warranty and any warranty instructions provided to the consumer. (1987, c. 385, s. 1.)

§ 20-351.8. Remedies.

In any action brought under this Article, the court may grant as relief:

(1) A permanent or temporary injunction or other equitable relief as the court deems just;

(2) Monetary damages to the injured consumer in the amount fixed by the verdict. Such damages shall be trebled upon a finding that the manufacturer unreasonably refused to comply with G.S. 20-351.2 or G.S. 20-351.3. The jury may consider as damages all items listed for refund under G.S. 20-351.3;

(3) A reasonable attorney's fee for the attorney of the prevailing party, payable by the losing party, upon a finding by the court that:

   a. The manufacturer unreasonably failed or refused to fully resolve the matter which constitutes the basis of such action; or

   b. The party instituting the action knew, or should have known, the action was frivolous and malicious. (1987, c. 385, s. 1.)

Legal Periodicals. — For note, "A Public Goods Approach to Calculating Reasonable Fees under Attorney Fee Shifting Statutes," see 1989 Duke L.J. 438.

CASE NOTES

Construction with Other Provisions. — This section, by referring directly to G.S. 20-351.3, fully incorporates the amount and type of relief available at the consumer's option into a jury's calculation of monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

Only the net loss to the consumer should be trebled. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Reduction of Damages by Reasonable Allowance for Use. — Trial court improperly calculated plaintiff's recovery by failing to reduce plaintiff's damages by the reasonable allowance for use before trebling damages; since the allowance for plaintiff's use of vehicle exceeded his damages, plaintiff recovered no damages on his claim under the act. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Attorney's Fees. — The term "court" as used in subdivision (3) of this section was interpreted to mean the trial judge. Therefore, for purposes of awarding attorney's fees, it is the trial judge, not the jury, that is to make the finding required by subdivision (3). After making such a finding, the court may, in its discretion, award attorney's fees. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), reversed on other ground, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.9. Dealership liability.

No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner substantially inconsistent with the manufacturers' instructions. This Article does not create any cause of action by a consumer against an authorized dealer. (1987, c. 385, s. 1.)

§ 20-351.10. Preservation of other remedies.

This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law. (1987, c. 385, s. 1.)

§ 20-351.11. Manufacturer's warranty for State motor vehicles that operate on diesel fuel.

Every new motor vehicle purchased by the State that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in G.S. 143-58.4. This section does not apply if the intended use, as determined by the agency, of the new motor vehicle requires a type of vehicle for which an express manufacturer's warranty allows the use of B-20 fuel is not available. (2007-420, s. 1.)

Editor's Note. — Session Laws 2007-420, s. 4, makes this section effective January 1, 2008, and applicable to motor vehicles transferred to or purchased by the State on or after that date.

§§ 20-352, 20-353: Reserved for future codification purposes.

ARTICLE 15B.

North Carolina Motor Vehicle Repair Act.

§ 20-354. Short title.

This act shall be known and may be cited as the "North Carolina Motor Vehicle Repair Act." (1999-437, s. 1.)

Editor's Note. — The numbers §§ 20-354.1 to 20-354.9 were assigned by the Revisor of Statutes, the sections having been numbered §§ 20-354A to 20-354I by Session Laws 1999-437, s.1.

§ 20-354.1. Scope and application.

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:
  a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.
  b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agricultural or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars ($350.00).

(6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.

(7) When a third party has waived in writing the right to receive written estimates from the motor vehicle repair shop; the third party indicates to the motor vehicle repair shop that the repairs will be paid for by the third party under an insurance policy, service contract, mechanical breakdown contract, or manufacturer's warranty; and the third party further indicates that the customer's share of the cost of repairs, if any, will not exceed three hundred fifty dollars ($350.00). (1999-437, s. 1; 2001-298, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354A. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.2. Definitions.

As used in this act:

(1) "Customer" means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) "Motor vehicle repair" means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, shop supply fees, hazardous material disposal fees incident to a repair, and other work customarily undertaken by motor vehicle repair shops. Motor

vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:
  a. Mobile motor vehicle repair shops.
  b. Motor vehicle and recreational vehicle dealers.
  c. Garages.
  d. Service stations.
  e. Self-employed individuals.
  f. Truck stops.
  g. Paint and body shops.
  h. Brake, muffler, or transmission shops.
  i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop. (1999-437, s. 1; 2005-463, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354B. It has been renumbered as this section at the direction of the Revisor of Statutes.

CASE NOTES

In construing a homeowners association's declaration of covenants, conditions and restrictions (CC&Rs), property owners' reliance on G.S. 20-4.01(32a) and (27)d2, and G.S. 20-354.2 (defining travel trailer, camping trailer, motor vehicle, and motor home or house car) was misplaced; the statutes were enacted between six and sixteen years after the association's CC&Rs (referring to campers and all similar property) were drafted and recorded. The statutory provisions were not material to the issue of the drafters' intent in 1985 when the CC&Rs were drafted and recorded. Schwartz v. Banbury Woods Homeowners Ass'n, — N.C. App. —, 675 S.E.2d 382, 2009 N.C. App. LEXIS 528 (2009).

§ 20-354.3. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars ($350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. In determining under this section whether the cost of the repair work exceeds three hundred fifty dollars ($350.00), the cost of the repair work shall consist of the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, if any, and shall include any taxes, any other repair shop supplies or overhead, and any other extra services that are incidental to the repair work. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open, or if the motor vehicle repair shop reasonably believes that an accurate estimate of the cost of repairs cannot be made until after the diagnostic work has been completed, or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354.5(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair. (1999-437, s. 1; 2001-298, s. 2; 2005-304, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354C. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.4. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate, the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It is a violation of this Article for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate for the purpose of inducing the customer to waive his or her rights provided in this Article. (1999-437, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354D. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.5. Notification of charges in excess of repair estimate; prohibited charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work, and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic work has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It is a violation of this Article for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It is a violation of this Article for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her. A motor vehicle repair shop may discard parts removed from a customer's vehicle or sell them and retain the proceeds for the shop's own account if the customer fails to take possession of the parts at the shop within two business days after taking delivery of the repaired vehicle. (1999-437, s. 1; 2001-298, ss. 3, 4.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354E. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.6. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs of all labor, parts, and merchandise supplied. No itemized description is required to be provided to the customer for labor, parts, and merchandise supplied when a third party has indicated to the motor vehicle repair shop that the repairs will be paid for under a service contract, under a mechanical breakdown contract, or under a manufacturer's warranty, without charge to the customer.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be. (1999-437, s. 1; 2001-298, s. 5; 2002-159, s. 32.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354F. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.7. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars ($350.00).

(2) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair. (1999-437, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354G. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.8. Prohibited acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Charge for repairs which have not been expressly or impliedly authorized by the customer.

(2) Misrepresent that repairs have been made to a motor vehicle.

(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.

(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.

(5) Fraudulently alter any customer contract, estimate, invoice, or other document.

(6) Fraudulently misuse any customer's credit card.

(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.

(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.

(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.

(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.

(11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.

(12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article. (1999-437, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354H. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 20-354.9. Remedies.

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. A violation of this Article is not punishable as a crime; however, this Article does not limit the rights or remedies which are otherwise available to a consumer under any other law. (1999-437, s. 1.)

Editor's Note. — This section was originally enacted by Session Laws 1999-437, s. 1, as G.S. 20-354I. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 20-354.10 through 20-355: Reserved for future codification purposes.

Article 16.

Professional Housemoving.

§ 20-356. Definitions.

As used in this Article, the following terms mean:

(1) Department. — The Department of Transportation.

(2) House. — A dwelling, building, or other structure in excess of 15 feet in width. Mobile homes, manufactured homes, or modular homes, or portions thereof, are not within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site.

(3) Housemover. — A person licensed under this Article.

(4) Person. — An individual, corporation, partnership, association, or any other business entity.

(5) Secretary. — The Secretary of the Department of Transportation.

(6) Unsafe practices. — Any act that is determined by a final agency decision of an enforcing agency or by a court of competent jurisdiction to create a hazard to the motoring public, or any citations under the Occupational Safety and Health Act that have become a final order within the last three years for willful serious violations or for failing to abate serious violations, as defined in G.S. 95-127. (1977, c. 720, s. 1; 1979, c. 475, s. 2; 2001-424, s. 27.17(a); 2005-354, s. 1; 2008-89, s. 1.)

Effect of Amendments. — Session Laws 2008-89, s. 1, effective December 1, 2008, and applicable to licenses issued and offenses committed on or after that date, rewrote the section.

§ 20-357. Housemovers to be licensed.

All persons who engage in the profession of housemoving on roads and highways on the State Highway System shall be licensed by the Department. (1977, c. 720, s. 2.)

§ 20-358. Qualifications to become licensed.

The Department shall issue annual printed licenses to applicants meeting the following conditions:

(1) The applicant must be at least 21 years of age; present acceptable evidence of good character and show sufficient housemoving experience on the application form furnished by the Department. Proof of creditable housemoving experience must be furnished at the time of application for those applicants not previously licensed by the Department. Creditable housemoving experience means extensive and responsible training gained by the applicant while engaged actively and directly on a full-time basis in the moving of houses and structures on public roads and highways with at least five years of experience. Examples of the capacity in which a person may work in gaining experience include the following in building moving operations:
  a. Moving superintendent,
  b. Moving foreman, and
  c. General mechanic and helper in the housemoving profession or trade.

  To comply with the requirement of proof of creditable housemoving experience, each applicant not previously licensed under this Article shall submit to the Department an affidavit from a certified public accountant that the applicant has documented employment records for a period of five continuous years from a person or persons licensed by this State or another state for housemoving. Each applicant not previously licensed under this Article shall also submit to the Department affidavits from a person or persons licensed in this State or another state in housemoving, who have employed the applicant in housemoving, providing in detail the applicant's full-time experience, including any supervisory duties and experience, in housemoving.

(2) Repealed by Session Laws 1981, c. 818, s. 3.

(3) The applicant must furnish proof that all of the vehicles, excluding "beams and dollies" and "hauling units," to be used in the movement of buildings, structures, or other extraordinary objects wider than 15 feet have met the requirements of G.S. 20-183.2 pertaining to the equipment inspection of motor vehicles; provided that the "beams and dollies" and "hauling units" are excluded from inspection under G.S. 20-183.2 and, further, are not required to be equipped with brakes.

(4) The applicant must exhibit his federal employer's identification number.

(5) The applicant must pay an annual license fee of one hundred dollars ($100.00). (1977, c. 720, s. 3; 1981, c. 818, s. 3; 1991 (Reg. Sess., 1992), c. 813, s. 2; 2005-354, s. 2; 2008-89, s. 2.)

Cross References. — For present provisions similar to the subject matter of repealed subdivision (2), see G.S. 20-359.1.

Editor's Note. — Session Laws 2008-89, s. 6, provides: "An applicant for a housemoving license under Article 16 of Chapter 20 of the General Statutes with at least 24 months' experience under G.S. 20-358(1) as of December 1, 2008, may be initially licensed without additional experience until December 1, 2011."

Effect of Amendments. — Session Laws 2008-89, s. 2, effective December 1, 2008, and applicable to licenses issued and offenses committed on or after that date, in subdivision (1), substituted “21 years” for ” 18 years” in the first sentence, in the third sentence, substituted “Creditable housemoving” for “Housemoving” at the beginning, and substituted “five years of experience” for “24 months experience” at the end, and added the last paragraph.

§ 20-359. Effective period of license.

A license issued hereunder shall be effective from date of issuance and expire on July 31 of each year and shall be renewable on an annual basis. (1977, c. 720, s. 4; 2005-354, s. 3.)

§ 20-359.1. Insurance requirements.

(a) No license shall be issued or renewed pursuant to this Article unless the applicant files with the Department a certificate or certificates of insurance, from an insurance company or companies authorized to do business in this State, providing:

(1) Motor vehicle insurance for bodily injury to or death of one or more persons in any one accident and for injury to or destruction of property of others in any one accident with minimum coverage of three hundred fifty thousand dollars ($350,000) combined single limit of liability;

(2) Comprehensive general liability insurance with a minimum coverage of three hundred fifty thousand dollars ($350,000) combined single limit of liability, including coverage of operations on North Carolina streets and highways that are not covered by motor vehicle insurance; and

(3) Workers’ compensation insurance that complies with Chapter 97 for all employees if the person is licensed as a professional housemover. The exemptions in G.S. 97-13 from the provisions of Chapter 97 shall not apply to licensed professional housemovers.

(b) The certificate or certificates shall provide for continuous coverage during the effective period of the license issued pursuant to this Article. At the time the certificate is filed, the applicant shall also file with the Department a current list of all motor vehicles covered by the certificate. The applicant shall file amendments to the list within 15 days of any changes.

(c) An insurance company issuing any insurance policy required by subsection (a) of this section shall notify the Department of any of the following events at least 30 days before its occurrence: (i) cancellation of the policy, (ii) nonrenewal of the policy, or (iii) any change in the policy.

(d) In addition to all coverages required by this section, the applicant shall file with the Department a copy of either: (i) a bond or other acceptable surety providing coverage in the amount of twenty-five thousand dollars ($25,000) for the benefit of a person contracting with the housemover to move that person’s structure for all claims for property damage arising from the movement of a structure pursuant to this Article, or (ii) a policy of cargo insurance in the amount of fifty thousand dollars ($50,000). (1981, c. 818, s. 1; 1991 (Reg. Sess., 1992), c. 813, s. 1.)

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Liability for the movement of any building or structure by automobile or mobile equipment cannot be excluded from the insurance coverage required to be furnished for licensure by a professional house mover pursuant to this section. See opinion of Attorney General to Mr. W.F. Rosser, P.E., Head of Maintenance, North Carolina Department of Transportation, 52 N.C.A.G. 105 (1983).

§ 20-360. Requirements for permit.

(a) Persons licensed as professional housemovers shall also be required to secure a permit from the Department for every move undertaken on the State Highway System of roads; that permit shall be issued by the Department after determining that the applicant is (i) properly licensed, (ii) furnished special surety bonds as required by the Department, and (iii) complying with such other regulations as required by the Department.

(b) It shall be the duty of the applicant to see that the "beams and dollies" and "hauling units" used shall be constructed with proper material in a suitable manner and utilized so as to provide for the safety of the general public and the structure being relocated. Any violation of this duty may result in suspension or revocation of his license by the Department.

(c) A license shall not be required for an individual owner of a towing vehicle moving their own buildings from or to property owned individually by those persons; however, a permit will be required for all moves.

(d) Licensed housemovers shall furnish front and rear certified escort vehicles on all moves, one or both of which may be a marked police, sheriff or State Highway Patrol vehicle as determined by the issuing agent, or one or two properly equipped certified escort vehicles depending on the number of law-enforcement vehicles escorting the move; escort vehicles shall operate where possible at a distance of 300 feet from the structure being moved; that this interval will be closed in cities and other congested areas to protect other traffic from the swing of the load at corners and turns, and the certified escort vehicles shall comply with all restrictions as provided on the permit secured for movement of the structure. (1977, c. 720, s. 5; 1981, c. 818, s. 2; 2005-354, s. 4.)

§ 20-361. Application for permit and permit fee.

Application for a permit to move a structure must be made to the division or district engineer having jurisdiction at least two days prior to the date of the move. For good cause shown, this time may be waived by the district or division engineer. A travel plan and a permit application fee of twenty dollars ($20.00) shall accompany the application. Division or district engineers are authorized to issue permits for individual moves of a structure or building whose width does not exceed 36 feet. The travel plan will show the proposed route, the time estimated for each segment of the move, a plan to handle traffic so that no one delay to other highway users shall exceed 20 minutes. The division or district engineers shall review the travel plan and if the route cannot accommodate the move due to roadway weight limits, bridge size or weight limits, or will cause undue interruption of traffic flow, the permit shall not be issued. The applicant may submit alternate plans if desired until an acceptable route is determined. If the width of the building or structure to be relocated is more than 36 feet, or if no acceptable travel plan has been filed, and the denial of the permit would cause a hardship, the application and travel plan may be submitted to the Department on appeal. After reviewing the route and travel plan, the Department may in its discretion issue the permit after considering the practical physical limitations of the route, the nature and purpose of the move, the size and weight of the structure, the distance the structure is to be moved, and the safety and convenience of the traveling public. A surety bond in an amount to cover the cost of any damage to the pavement, structures, bridges, roadway or other damages that may occur can be required if deemed necessary by the Department. (1977, c. 720, s. 6; 1991 (Reg. Sess., 1992), c. 813, s. 3.)

§ 20-362. Liability of housemovers.

The permittee assumes all responsibility for injury to persons or damage to property of any kind and agrees to hold the Department harmless for any claims arising out of his conduct or actions. (1977, c. 720, s. 7.)

§ 20-363. Removal and replacement of obstructions.

All obstructions, including mailboxes, traffic signals, signs, and utility lines will be removed immediately prior to and replaced immediately after the move at the expense of the mover. Any property, real or personal, to be removed, which is not located in the right-of-way, shall not be removed until the owner is notified and arrangements for and approval from the owner are obtained. (1977, c. 720, s. 8; 2008-89, s. 3.)

Effect of Amendments. — Session Laws 2008-89, s. 3, effective December 1, 2008, and applicable to licenses issued and offenses committed on or after that date, in the first sentence, inserted "mailboxes" near the beginning, and deleted "provided that arrangements for and approval from the owner is obtained" from the end, and added the second sentence.

§ 20-364. Route changes.

Irrespective of the route shown on the permit, an alternate route will be followed:

(1) If directed by a peace officer.

(2) If directed by a uniformed officer assigned to a weigh station to follow a route to a weighing device.

(3) If the specified route is officially detoured. Should a detour be encountered, the driver shall check with the office issuing permit on which he is traveling prior to proceeding. (1977, c. 720, s. 9; 2004-124, s. 18.3(d).)

§ 20-365. Loading or parking on right-of-way.

The object to be transported will not be loaded, unloaded, nor parked, day or night, on highway right-of-way without specific permission from the district or division engineer. (1977, c. 720, s. 10.)

§ 20-366. Effect of weather.

No move will be made when atmospheric conditions render visibility lower than safe for travel. Moves will not be made when highway is covered with snow or ice, or at any time travel conditions are considered unsafe by the Department or Highway Patrol or other law-enforcement officers having jurisdiction. (1977, c. 720, s. 11.)

§ 20-367. Obtaining license or permit by fraud.

The permit may be voided if any conditions of the permit are violated. Upon any violation, the permit must be surrendered and a new permit obtained before proceeding. Misrepresentation of information on application to obtain a license, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit will render the permit void. (1977, c. 720, s. 12.)

§ 20-368. Municipal regulations.

All moves on streets on the municipal system of streets shall comply with local regulations. (1977, c. 720, s. 13.)

§ 20-369. Out-of-state licenses and permits.

An out-of-state person, partnership, or corporation engaging in the structural moving business may apply to the Department for a license to engage in the housemoving profession in North Carolina, and obtain permits for moves by complying with the provisions of this Article and the regulations of the Department in the same manner as is required of North Carolina residents and by showing that the state in which the housemover operates his business extends similar privileges to housemovers licensed in North Carolina. (1977, c. 720, s. 14; 1979, c. 475, s. 1.)

§ 20-370. Speed limits.

The speed of moves will be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time. (1977, c. 720, s. 15.)

§ 20-371. Penalties.

(a) Any person violating the provisions of this Article or the regulations of the Department governing housemoving shall be guilty of a Class 1 misdemeanor.

(b) The Department is hereby authorized in the name of the State to apply for relief by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Article, or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. (1977, c. 720, s. 16; 1993, c. 539, s. 392; 1994, Ex. Sess., c. 24, s. 14(c); 2008-89, s. 4.)

Effect of Amendments. — Session Laws 2008-89, s. 4, effective December 1, 2008, and applicable to licenses issued and offenses committed on or after that date, substituted "Class 1 misdemeanor" for "Class 3 misdemeanor which may include a fine of not more than five hundred dollars ($500.00)" at the end of subsection (a).

§ 20-372. Invalid section; severability.

If any of the provisions of this Article, or if the application of such provisions to any person or circumstance shall be held invalid, the remainder of this Article and the application of such provision of this Article other than those as to which it is held valid, shall not be affected thereby. (1977, c. 720, s. 17.)

§ 20-373: Reserved for future codification purposes.

§ 20-374. Unsafe practices.

(a) If the Department determines that a housemover has engaged in unsafe practices, all licenses, permits, and authorizations issued to the person pursuant to this Article shall be revoked for a period of six months.

(b) Any person whose license, permit, or authorization issued under this Article is revoked pursuant to this section may request a hearing to be held before the Secretary or a person designated by the Secretary. The licensee shall be notified in writing no less than 10 days prior to the hearing of the time and place of the hearing. At the hearing, the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, and present arguments on issues of law. The decision of the Secretary or of the person designated by the Secretary shall be final. Any person aggrieved by the final decision may seek judicial review of the decision in accordance with the provisions of Article 4 of Chapter 150B of the General Statutes. (2008-89, s. 5.)

Editor's Note. — Session Laws 2008-89, s. 7, made this section effective December 1, 2008, and applicable to licenses issued and offenses committed on or after that date.

§ 20-375: Reserved for future codification purposes.

ARTICLE 17.

Motor Carrier Safety Regulation Unit.

Part 1. General Provisions.

§ 20-376. Definitions.

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. — The federal motor carrier safety regulations contained in 49 C.F.R. Parts 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. — Commerce between any of the following:
  a. A place in the United States and a place in a foreign country.
  b. Places in the United States through any foreign country.

(3) Interstate commerce. — As defined in 49 C.F.R. Part 390.5.

(3a) Interstate motor carrier. — Any person, firm, or corporation that operates or controls a commercial motor vehicle as defined in 49 C.F.R. § 390.5 in interstate commerce.

(4) Intrastate commerce. — As defined in 49 C.F.R. Part 390.5.

(5) Intrastate motor carrier. — Any person, firm, or corporation that operates or controls a commercial motor vehicle as defined in G.S. 20-4.01(3d) in intrastate commerce. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 5; 1995 (Reg. Sess., 1996), c. 756, s. 20; 1997-456, s. 36; 1998-149, s. 11; 1999-452, s. 21; 2002-152, s. 3.)

OPINIONS OF ATTORNEY GENERAL

Privately Owned Buses Not Engaged in For-Hire Transportation of Passengers. — The Division of Motor Vehicles has no regulatory authority under Article 17, Chapter 20 of the North Carolina General Statutes (Motor Carrier Safety Regulations), over privately owned buses not engaged in for-hire transportation of passengers. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, 58 N.C.A.G. 1 (Jan. 5, 1988).

Part 2. Authority and Powers of Department of Crime Control and Public Safety.

§ 20-377. General powers of Department of Crime Control and Public Safety.

The Department of Crime Control and Public Safety shall have and exercise such general power and authority to supervise and control the motor carriers of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties. (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Session Laws 2007-107, s. 4.2(a), provides: "The Department of Crime Control and Public Safety and the Department of Health and Human Services shall jointly identify and evaluate sources of permanent funding for State Medical Assistance Teams in light of the uncertain future availability of federal and local funding. The Department shall jointly report its findings and recommendations, including any legislative proposals, to the Fiscal Research Division on or before 1 January 2008."

§ 20-378: Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 21.

§ 20-379. Department of Crime Control and Public Safety to audit motor carriers for compliance.

The Department of Crime Control and Public Safety must periodically audit each motor carrier to determine if the carrier is complying with this Article and, if the motor carrier is subject to regulation by the North Carolina Utilities Commission, with Chapter 62 of the General Statutes. In conducting the audit, the Department of Crime Control and Public Safety may examine a person under oath, compel the production of papers and the attendance of witnesses, and copy a paper for use in the audit. An employee of the Department of Crime Control and Public Safety may enter the premises of a motor carrier during reasonable hours to enforce this Article. When on the premises of a motor carrier, an employee of the Department of Crime Control and Public Safety may set up and use equipment needed to make the tests required by this Article. (1985, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 22; 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-380. Department of Crime Control and Public Safety may investigate accidents involving motor carriers and promote general safety program.

The Department of Crime Control and Public Safety may conduct a program of accident prevention and public safety covering all motor carriers with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a highway involving a motor carrier. Any information obtained in an investigation shall be reduced to writing and a report thereof filed in the office of the Department of Crime Control and Public Safety, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Department of Crime Control and Public Safety may adopt rules for the safety of the public as affected by motor carriers and the safety of motor carrier employees. The Department of Crime Control and Public Safety shall cooperate with and coordinate its activities for motor carriers with other agencies and organizations engaged in the promotion of highway safety and employee safety. (1985, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 23; 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-381. Specific powers and duties of Department of Crime Control and Public Safety applicable to motor carriers; agricultural exemption.

(a) The Department of Crime Control and Public Safety has the following powers and duties concerning motor carriers:

(1) To prescribe qualifications and maximum hours of service of drivers and their helpers.

(1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Department of Crime Control and Public Safety may stop, enter upon, and perform inspections of motor carriers' vehicles in operation to determine compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles.

(1b) To enforce this Article, rules adopted under this Article, and the federal safety and hazardous materials regulations.

(2) To enter the premises of a motor carrier to inspect a motor vehicle or any equipment used by the motor carrier in transporting passengers or property.

(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Department of Crime Control and Public Safety finds, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown in the transportation of passengers or property on a highway. If an agent of the Department of Crime Control and Public Safety finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property that, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown, the agent shall declare the vehicle "Out of Service." The agent shall require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is declared "Out of Service," no motor carrier operator shall require, or permit, any person to operate, nor shall any person operate, any motor vehicle equipment declared "Out of Service" until all repairs required by the "Out of Service" notice have been satisfactorily completed. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages or impairing substances. It shall be the duty of all inspectors and agents of the Department of Crime Control and Public Safety to make a written report, upon a form prescribed by the Department of Crime Control and Public Safety, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes.

(3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous materials and other commodities.

(4) To determine the safety fitness of intrastate motor carriers, to assign safety ratings to intrastate motor carriers as defined in 49 C.F.R. § 385.3, to direct intrastate motor carriers to take remedial action when required, to prohibit the operation of intrastate motor carriers rated unsatisfactory, to determine whether the continued operations of intrastate motor carriers pose an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1), and to prohibit the operation of an intrastate motor carrier found to be an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1).

(5) To prohibit the intrastate operation of a motor carrier subject to an order issued by the Federal Motor Carrier Safety Administration to cease all operations based on a finding that the continued operations of the motor carrier pose an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1).

(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b). (1985, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 24; 1997-456, ss. 37, 38; 1998-149, s. 12; 1998-165, s. 1; 1999-452, s. 22; 2002-152, ss. 4, 5; 2002-159, s. 31.5(b); 2002-190, s. 2; 2009-376, s. 9.)

Editor's Note. — Session Laws 1981, c. 412, s. 4, and c. 747, s. 66, changed the term "intoxicating liquors" to "alcoholic beverages" throughout the General Statutes as then in effect. However, Session Laws 1985, c. 454, s. 1, used "intoxicating liquors" in enacting this section.

Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Effect of Amendments. — Session Laws 2009-376, s. 9, effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, rewrote subdivision (a)(2a).

§ 20-382. For-hire motor carrier registration, insurance verification, and temporary trip permit authority.

(a) UCRA. — The Commissioner may enter into the Unified Carrier Registration Agreement (UCRA), established pursuant to Section 4305 of Public Law 109-73, and into agreements with jurisdictions participating in the UCRA to exchange information for any audit or enforcement activity required by the UCRA. Upon entry into the UCRA, the requirements set under the UCRA apply to the Division. If a requirement set under the UCRA conflicts with this section, the UCRA controls. Rules adopted to implement this section must ensure compliance with mandates of the Federal Motor Carrier Safety Administration and the United States Department of Transportation.

(a1) Carrier Registration. — A motor carrier may not operate a for-hire motor vehicle in interstate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with its base state.

(1a) Done one of the following:

a. Filed a copy of the certificate of authority issued to it by the United States Department of Transportation allowing it to transport regulated items in this State and any amendments to that authority.

b. Certified to the Division that it carries only items that are not regulated by the United States Department of Transportation.

(2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. — A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is regulated by the United States Department of Transportation must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured in accordance with the requirements set by the United States Department of Transportation. A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is exempt from regulation by the United States Department of Transportation must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured in accordance with the requirements set by the North Carolina Utilities Commission.

(c) Trip Permit. — A motor carrier that is not registered as required by this section may obtain an emergency trip permit by filing an application for it with the Division. An emergency trip permit allows the motor carrier to operate a for-hire motor vehicle in this State for a period not to exceed 10 days. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 1; 1995 (Reg. Sess., 1996), c. 756, s. 25; 2007-492, s. 3.)

Editor's Note. — Session Laws 2007-492, s. 6, provides: "If the Commissioner of Motor Vehicles enters into the Unified Carrier Registration Agreement, the Agreement must specify the date on which any fees required under the Agreement become effective in this State. The date must ensure adequate time to implement the fee provisions."

§ 20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.

(a) Registration. — A for-hire motor carrier may not operate a for-hire motor vehicle in intrastate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) For a motor carrier that hauls household goods, registered its operations with the State by doing one of the following:

a. Obtaining a certificate of authority from the North Carolina Utilities Commission.

b. Obtaining a certificate of exemption from the Division.

(1a) For a motor carrier that does not haul household goods, registered its operations with the Division.

(2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates in this State.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. — A for-hire motor carrier that operates a for-hire vehicle in intrastate commerce in this State must verify to the Division that each for-hire motor vehicle it operates in this State is insured. To do this, the motor carrier must submit an insurance verification form to the Division and must file annually with the Division a list of the for-hire vehicles it operates in this State. (1993 (Reg. Sess., 1994), c. 621, s. 2; 1995 (Reg. Sess., 1996), c. 756, s. 26.)

§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. — A motor carrier who does any of the following is subject to a civil penalty of one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Repealed by Session Laws 2007-492, s. 4, effective August 30, 2007.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment and Review. — When the Department of Crime Control and Public Safety finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the Department must place the motor vehicle out of service until the motor carrier is in compliance and the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and follow the procedure in G.S. 20-178.1 for a departmental review of the penalty.

(c) Judicial Restriction. — A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of a penalty imposed under this section or to permit the operation of a vehicle placed out of service under this section without payment of the penalty.

(d) Proceeds. — A penalty imposed under this section is payable to the Department of Transportation, Fiscal Section. The clear proceeds of all civil penalties assessed by the Department pursuant to this section, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1993 (Reg. Sess., 1994), c. 621, s. 3; 1997-466, s. 3; 2002-159, s. 31.5(b); 2002-190, ss. 2, 3; 2005-64, s. 1; 2007-492, s. 4; 2009-376, ss. 2(b), 14.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

Effect of Amendments. — Session Laws 2009-376, s. 2(b), effective October 1, 2009, and applicable to civil penalties assessed and offenses committed on or after that date, in subsection (b), added "and Review" at the end of the subsection heading, in the first sentence, substituted "the Department must place the motor vehicle" for "the motor vehicle shall be placed" near the mniddle, and substituted "follow the procedure in G.S. 20-178.1 for a departmental review of the penalty" for "apply to the Department of Crime Control and Public Safety for a hearing" at the end of the second sentence; and rewrote subsection (c).

Session Laws 2009-376, s. 14, effective July 31, 2009, rewrote subsection (d).

§ 20-383. Inspectors and officers given enforcement authority.

Only designated inspectors and officers of the Department of Crime Control and Public Safety shall have the authority to enforce the provisions of this Article and provisions of Chapter 62 applicable to motor transportation, and they are empowered to make complaint for the issue of appropriate warrants, informations, presentments or other lawful process for the enforcement and prosecution of violations of the transportation laws against all offenders, whether they be regulated motor carriers or not, and to appear in court or before the North Carolina Utilities Commission and offer evidence at the trial pursuant to such processes. (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-384. Penalty for certain violations.

A motor carrier who fails to conduct a safety inspection of a vehicle as required by Part 396 of the federal safety regulations or who fails to mark a vehicle that has been inspected as required by that Part commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00). (1985, c. 454, s. 1; c. 757, s. 164(b); 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1993 (Reg. Sess., 1994), c. 754, s. 6; 1995 (Reg. Sess., 1996), c. 756, s. 27.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 13, effective June 30, 1986, repealed the amendment to this section by Session Laws 1985, c. 757, s. 164(b). The 1985 amendment would have been effective July 1, 1986, and therefore never went into effect. The section is set out above as enacted by Session Laws 1985, c. 454, s. 1.

CASE NOTES

Public Policy. — Where employer forced employee-at-will to drive truck in violation of federal law or lose his job, employer's conduct violated the public policy of this State regarding highway safety, as evidenced by this section, G.S. 20-397 and provisions in the North Carolina Administrative Code; therefore, employee's suit based upon wrongful termination of his at-will employment stated a cause of action. Coman v. Thomas Mfg. Co., 325 N.C. 172, 381 S.E.2d 445 (1989).

OPINIONS OF ATTORNEY GENERAL

Privately Owned Buses Not Engaged in For-Hire Transportation of Passengers. — The Division of Motor Vehicles has no regulatory authority under Article 17, Chapter 20 of the North Carolina General Statutes (Motor Carrier Safety Regulations), over privately owned buses not engaged in for-hire transportation of passengers. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, 58 N.C.A.G. 1 (Jan. 5, 1988).

Part 3. Fees and Charges.

§ 20-385. Fee schedule.

(a) The fees listed in this section apply to a motor carrier. These fees are in addition to any fees required under the Unified Carrier Registration Agreement.

(1) Repealed by Session Laws 2007-492, s. 5, effective August 30, 2007.

(2) Application by an intrastate motor carrier for a certificate of exemption	$ 45.00
(3) Certification by an interstate motor carrier that it is not regulated by the United States Department of Transportation	45.00
(4) Application by an interstate motor carrier for an emergency trip permit	18.00

(b) Repealed by Session Laws 2007-492, s. 5, effective August 30, 2007. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 4; 1995 (Reg. Sess., 1996), c. 756, s. 28; 2005-276, s. 44.1(p); 2007-492, s. 5.)

Editor's Note. — Session Laws 2007-492, s. 6, provides: "If the Commissioner of Motor Vehicles enters into the Unified Carrier Registration Agreement, the Agreement must specify the date on which any fees required under the Agreement become effective in this State. The date must ensure adequate time to implement the fee provisions."

§ 20-386. Fees, charges and penalties; disposition.

All fees and charges received by the Division under G.S. 20-385 shall be in addition to any other tax or fee provided by law and shall be placed in the Highway Fund. (1985, c. 454, s. 1.)

Part 4. Penalties and Actions.

§ 20-387. Motor carrier violating any provision of Article, rules or orders; penalty.

Any motor carrier which violates any of the provisions of this Article or refuses to conform to or obey any rule, order or regulation of the Division or Department of Crime Control and Public Safety shall, in addition to the other penalties prescribed in this Article forfeit and pay a sum up to one thousand dollars ($1,000) for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Department of Crime Control and Public Safety; and each day such motor carrier continues to violate any provision of this Article or continues to refuse to obey or perform any rule, order or regulation prescribed by the Division or Department of Crime Control and Public Safety shall be a separate offense. (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-159, s. 31.5(b); 2002-190, s. 10.)

Editor's Note. — Session Laws 2002-190, s. 17, as amended by Session Laws 2002-159, s. 31.5, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-388. Willful acts of employees deemed those of motor carrier.

The willful act of any officer, agent, or employee of a motor carrier, acting within the scope of his official duties of employment, shall, for the purpose of this Article, be deemed to be the willful act of the motor carrier. (1985, c. 454, s. 1.)

§ 20-389. Actions to recover penalties.

Except as otherwise provided in this Article, an action for the recovery of any penalty under this Article shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina on the relation of the Department of Crime Control and Public Safety against the person incurring such penalty; or whenever such action is upon the complaint of any injured person, it shall be instituted in the name of the State of North Carolina on the relation of the Department of Crime Control and Public Safety upon the complaint of such injured person against the person incurring such penalty. Such action may be instituted and prosecuted by the Attorney General, the District Attorney of the Wake County Superior Court, or the injured person. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as provided by law in other civil actions. (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-390. Refusal to permit Department of Crime Control and Public Safety to inspect records made misdemeanor.

Any motor carrier, its officers or agents in charge thereof, that fails or refuses upon the written demand of the Department of Crime Control and Public Safety to permit its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a Class 3 misdemeanor. Each day of such failure or refusal shall constitute a separate offense and each such offense shall be punishable only by a fine of not less than five hundred dollars ($500.00) and not more than five thousand dollars ($5,000). (1985, c. 454, s. 1; 1993, c. 539, s. 393; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-391. Violating rules, with injury to others.

If any motor carrier doing business in this State by its agents or employees shall be guilty of the violations of the rules and regulations provided and prescribed by the Division or the Department of Crime Control and Public Safety, and if after due notice of such violation given to the principal officer thereof, if residing in the State, or, if not, to the manager or superintendent or secretary or treasurer if residing in the State, or, if not, then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person as may be directed by the Division or Department of Crime Control and Public Safety shall not be made within 30 days from the time of such notice, such motor carrier shall incur a penalty for each offense of five hundred dollars ($500.00). (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 11.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-392. Failure to make report; obstructing Division or Department of Crime Control and Public Safety.

Every officer, agent or employee of any motor carrier, who shall willfully neglect or refuse to make and furnish any report required by the Division or Department of Crime Control and Public Safety for the purposes of this Article, or who shall willfully or unlawfully hinder, delay or obstruct the Division or Department of Crime Control and Public Safety in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars ($500.00) for each offense, to be recovered in an action in the name of the State. A delay of 10 days to make and furnish such report shall raise the presumption that the same was willful. (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 12.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-393. Disclosure of information by employee of Department of Crime Control and Public Safety unlawful.

It shall be unlawful for any agent or employee of the Department of Crime Control and Public Safety knowingly and willfully to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this Article, except to the Department of Crime Control and Public Safety or as may be directed by the Department of Crime Control and Public Safety or upon approval of a request to the Department of Crime Control and Public Safety by the Utilities Commission or by a court or judge thereof. (1985, c. 454, s. 1; 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-394. Remedies for injuries cumulative.

The remedies given by this Article to persons injured shall be regarded as cumulative to the remedies otherwise provided by law against motor carriers. (1985, c. 454, s. 1.)

§ 20-395. Willful injury to property of motor carrier a misdemeanor.

If any person shall willfully do or cause to be done any act or acts whatever whereby any building, construction or work of any motor carrier, or any engine, machine or structure of any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a Class 1 misdemeanor. (1985, c. 454, s. 1; 1993, c. 539, s. 394; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 20-396. Unlawful motor carrier operations.

(a) Any person, whether carrier, shipper, consignee, or any officer, employee, agent, or representative thereof, who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully seek to evade or defeat regulations as in this Article provided for motor carriers, shall be deemed guilty of a Class 3 misdemeanor and only punished by a fine of not more than five hundred dollars ($500.00) for the first offense and not more than two thousand dollars ($2,000) for any subsequent offense.

(b) Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Division or Department of Crime Control and Public Safety as required by this Article, or other applicable law, or to make specific and full, true, and correct answer to any question within 30 days from the time it is lawfully required by the Division or Department of Crime Control and Public Safety so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Division or Department of Crime Control and Public Safety or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this Article to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Division or Department of Crime Control and Public Safety with respect thereto, shall be deemed guilty of a Class 3 misdemeanor and be punished for each offense only by a fine of not more than five thousand dollars ($5,000). As used in this subsection the words "kept" and "keep" shall be construed to mean made, prepared or compiled as well as retained. (1985, c. 454, s. 1; 1993, c. 539, s. 395; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 31.5(b); 2002-190, s. 13.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

§ 20-397. Furnishing false information to the Department of Crime Control and Public Safety; withholding information from the Department of Crime Control and Public Safety.

(a) Every person, firm or corporation operating under the jurisdiction of the Department of Crime Control and Public Safety or who is required by law to file reports with the Department of Crime Control and Public Safety who shall knowingly or willfully file or give false information to the Department of Crime Control and Public Safety in any report, reply, response, or other statement or document furnished to the Department of Crime Control and Public Safety shall be guilty of a Class 1 misdemeanor.

(b) Every person, firm, or corporation operating under the jurisdiction of the Department of Crime Control and Public Safety or who is required by law to file reports with the Department of Crime Control and Public Safety who shall willfully withhold clearly specified and reasonably obtainable information from the Department of Crime Control and Public Safety in any report, response, reply or statement filed with the Department of Crime Control and Public Safety in the performance of the duties of the Department of Crime Control and Public Safety or who shall fail or refuse to file any report, response, reply or statement required by the Department of Crime Control and Public Safety in the performance of the duties of the Department of Crime Control and Public Safety shall be guilty of a Class 1 misdemeanor. (1985, c.

454, s. 1; 1993, c. 539, s. 396; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 31.5(b); 2002-190, s. 2.)

Editor's Note. — Session Laws 2002-190, s. 17, provides: "The Governor shall resolve any dispute between the Department of Transportation and the Department of Crime Control and Public Safety concerning the implementation of this act [Session Laws 2002-190]."

CASE NOTES

Public Policy. — Where employer forced employee-at-will to drive truck in violation of federal law or lose his job, employer's conduct violated the public policy of this State regarding highway safety, evidenced by G.S. 20-384 and this section and provisions in the North Carolina Administrative Code; therefore, employee's suit based upon wrongful termination of his at-will employment stated a cause of action. Coman v. Thomas Mfg. Co., 325 N.C. 172, 381 S.E.2d 445 (1989).

Cited in Harrison v. Edison Bros. Apparel Stores, 924 F.2d 530 (4th Cir. 1991).

Chapter 21.

Bills of Lading.

Article 1.
Definitions.

Sec.
21-1 through 21-3. [Repealed.]

Article 2.
Issue of Bills of Lading.

21-4 through 21-8. [Repealed.]

Article 3.
Obligations and Rights of Carriers upon Bills of Lading.

21-9 through 21-27. [Repealed.]

Article 4.
Negotiation and Transfer of Bills.

Sec.
21-28 through 21-41. [Repealed.]

Article 5.
Criminal Offenses.

21-42. Issuing false bills or violating Chapter made felony.

ARTICLE 1.

Definitions.

§§ 21-1 through 21-3: Repealed by Session Laws 1965, c. 700, s. 2.

Editor's Note. — For provisions of the Uniform Commercial Code as to bills of lading and other documents of title, see G.S. 25-7-101 to 25-7-603.

ARTICLE 2.

Issue of Bills of Lading.

§§ 21-4 through 21-8: Repealed by Session Laws 1965, c. 700, s. 2, effective at midnight June 30, 1967.

ARTICLE 3.

Obligations and Rights of Carriers upon Bills of Lading.

§§ 21-9 through 21-27: Repealed by Session Laws 1965, c. 700, s. 2.

ARTICLE 4.

Negotiation and Transfer of Bills.

§§ 21-28 through 21-41: Repealed by Session Laws 1965, c. 700, s. 2.

ARTICLE 5.

Criminal Offenses.

§ 21-42. Issuing false bills or violating Chapter made felony.

Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment in this State, or with intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing, or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Chapter, shall be guilty of a Class I felony. (1919, c. 65, s. 41; c. 290; C.S., s. 323; 1979, 2nd Sess., c. 1316, s. 23; 1981, c. 63; c. 179.)

Chapter 22.

Contracts Requiring Writing.

Sec.
22-1. Contracts charging representative personally; promise to answer for debt of another.
22-2. Contract for sale of land; leases.
22-3. [Repealed.]
22-4. Promise to revive debt of bankrupt.
22-5. Commercial loan commitments.

§ 22-1. Contracts charging representative personally; promise to answer for debt of another.

No action shall be brought whereby to charge an executor, administrator or collector upon a special promise to answer damages out of his own estate or to charge any defendant upon a special promise to answer the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party charged therewith or some other person thereunto by him lawfully authorized. (29 Charles II, c. 3, s. 4; 1826, c. 10; R.C., c. 50, s. 15; Code, s. 1552; Rev., s. 974; C.S., s. 987.)

Cross References. — As to promise or acknowledgment of new or continuing contract from which statute of limitations may run, see G.S. 1-26. As to waiver or renunciation of claim of right after breach, see G.S. 25-1-107. As to statutes of frauds for personal property, see G.S. 25-1-206, 25-2-201, 25-2-209, 25-8-319. As to letters of credit being in writing, see G.S. 25-5-104. As to contracts for sale of investment securities, see G.S. 25-8-319. As to formal requisites of personal property security agreements and financing statements, see G.S. 25-9-203, 25-9-402. As to contracts to refrain from business in given territory, see G.S. 75-4.

Legal Periodicals. — For case law survey as to statute of frauds, see 45 N.C.L. Rev. 907, 966 (1967).

For note discussing the application of the main purpose rule in the statute of frauds, see 54 N.C.L. Rev. 117 (1975).

For article, "The Regulation of Contractual Change: A Guide to No Oral Modification Clauses for North Carolina Lawyers," see 81 N.C.L. Rev. 2239 (2003).

CASE NOTES

I. In General.
II. Promise of Representative to Answer from Own Estate.
III. Promise to Answer for Debt of Another.
  A. In General.
  B. Illustrative Cases.

I. IN GENERAL.

The purpose of the statute of frauds is to prevent fraud upon individuals charged with participation in transactions coming within its purview, and not upon the public at large. Allison v. Steele, 220 N.C. 318, 17 S.E.2d 339 (1941).

The purpose of this section is to protect the promisor from the promisee. Brad Ragan, Inc. v. Callicut Enters., Inc., 73 N.C. App. 134, 326 S.E.2d 62 (1985).

Construction Taking Cases Out of Statute Should Not Be Extended. — The relaxing of the construction of the statute of frauds, under which so many cases which seem to be within its letter have been taken out of its operation, ought not to be extended further than it has already been carried. Grant v. Naylor, 8 U.S. (4 Cranch) 224, 2 L. Ed. 603 (1808).

Definiteness of Subject Matter of Contract. — The principle that no contract can be enforced unless the subject matter upon which it is intended to operate can first be definitely ascertained from its terms, either through an explicit description therein or a reference which points to extrinsic means of identification, applies to verbal agreements as well as to those required by this section to be in writing. Hemphill v. Annis, 119 N.C. 514, 26 S.E. 152 (1896).

Section 75-4 is consistent with the other "statute of frauds" provisions in the law, including this section and G.S. 25-2-201(1). Manpower of Guilford County, Inc. v. Hedgecock, 42 N.C. App. 515, 257 S.E.2d 109 (1979).

Contracts for Services. — There is no requirement in this State that contracts for services not to be performed within a year be in writing and signed by the party to be charged therewith. Messer v. Laurel Hill Assocs., 93 N.C. App. 439, 378 S.E.2d 220 (1989).

Applied in Howard v. Hamilton, 28 N.C. App. 670, 222 S.E.2d 913 (1976); Mack Fin. Corp. v. Harnett Transf., Inc., 42 N.C. App. 116, 256 S.E.2d 491 (1979); Bone Int'l, Inc. v. Brooks, 51 N.C. App. 183, 275 S.E.2d 556 (1981); Dealers Specialties, Inc. v. Neighborhood Hous. Servs., Inc., 54 N.C. App. 46, 283 S.E.2d 155 (1981).

Cited in Coxe v. Dillard, 197 N.C. 344, 148 S.E. 545 (1929); Newburn v. Fisher, 198 N.C. 385, 151 S.E. 875 (1930); Strayhorn v. Aycock, 215 N.C. 43, 200 S.E. 912 (1939); General Tire & Rubber Co. v. Distribs., Inc., 253 N.C. 459, 117 S.E.2d 470 (1960); Baker v. Malan Constr. Corp., 255 N.C. 302, 121 S.E.2d 731 (1961); Chance v. Jackson, 17 N.C. App. 638, 195 S.E.2d 321 (1973); Bowling v. Hines, 17 N.C. App. 697, 195 S.E.2d 377 (1973); Varnell v. Henry M. Milgrom, Inc., 78 N.C. App. 451, 337 S.E.2d 616 (1985); Burnette Indus., Inc. v. Danbar of Winston-Salem, Inc., 80 N.C. App. 318, 341 S.E.2d 754 (1986); Forbes Homes, Inc. v. Trimpi, 318 N.C. 473, 349 S.E.2d 852 (1986).

II. PROMISE OF REPRESENTATIVE TO ANSWER FROM OWN ESTATE.

Oral Promise by Representative Is Void. — A promise by the administrator that he would see that a debt of his intestate is paid, or that he would pay it, is void under this section, unless made in writing. Smithwick v. Shepherd, 49 N.C. 196 (1856).

If It Is to Pay Out of His Estate. — The agreement, in order not to be enforceable unless in writing, must be to pay out of the representative's own estate. Norton v. Edwards, 66 N.C. 367 (1872).

III. PROMISE TO ANSWER FOR DEBT OF ANOTHER.

A. In General.

Section Is Not Applicable to Action on Parol Trust. — The portion of this section providing in substance that an action on a promise to pay the debt of another may not be maintained unless the agreement upon which it is based shall be in writing, and signed by the party charged, or by some other person lawfully authorized, is not applicable to an action on a parol trust. Cuthrell v. Greene, 229 N.C. 475, 50 S.E.2d 525 (1948).

Plaintiff alleged that her employer changed the beneficiary in a policy of insurance on his life to another employee under an agreement, understood, discussed and acquiesced in by all parties, that upon his death such other employee would pay out of the proceeds of such insurance the balance due on a mortgage on plaintiff's home, and thus recompense both employees for services faithfully rendered. It was held that the action was one to establish a parol trust and not one to recover on a promise by the employer to answer for the debt of plaintiff, and therefore this section had no application. Cuthrell v. Greene, 229 N.C. 475, 50 S.E.2d 525 (1948).

Or to Promise Creating Original Obligation. — The clause relating to promise to answer for the debt, default, miscarriage, etc., of another does not apply to a promise in respect to debts created at the instance and for the benefit of the promisor. But it applies only to those by which the debt of one party is sought to be charged upon and collected from another. Davis v. Patrick, 141 U.S. 479, 12 S. Ct. 58, 35 L. Ed. 826 (1891).

This section does not apply where it is in the nature of an original promise. Hickory Novelty Co. v. Andrews, 188 N.C. 59, 123 S.E. 314 (1924). See Sharp v. Tatham, 205 N.C. 827, 170 S.E. 654 (1933); Gennett v. Lyerly, 207 N.C. 201, 176 S.E. 275 (1934).

Whenever the main purpose and object of the promisor is not to answer for another but to subserve some pecuniary or business purpose of his own, involving either a benefit to himself or damage to the other contracting party, his promise is not within the statute, although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing that liability. Warren v. White, 251 N.C. 729, 112 S.E.2d 522 (1960); Burlington Indus., Inc. v. Foil, 284 N.C. 740, 202 S.E.2d 591 (1974).

Where the promise is for the benefit of the promisor, and he has a personal, immediate, and pecuniary benefit in the transaction, or where the promise to pay the debt of another is all or part of the consideration for property conveyed to the promisor, or is a promise to make good notes transferred in payment of property, the promise is valid although in parol. If, however, the promise does not create an original obligation, and it is collateral, and is merely superadded to the promise of another to pay the debt, he remaining liable, the promisor is not liable, unless there is a writing; and this is true whether the promise is made at the time the debt is created or not. Myers v. Allsbrook, 229 N.C. 786, 51 S.E.2d 629 (1949).

An agreement by a mortgage company with a lumber dealer to pay for lumber to be used in the construction of a building on the mortgaged premises is an original promise which does not come within the purview of the statute of frauds and parol evidence of such agreement is competent. Pegram-West v. Winston Mut. Life Ins. Co., 231 N.C. 277, 56 S.E.2d 607 (1949).

The following illustrates when a promise comes within the provisions of this section. If, for instance, two persons come into a store and one buys and the other, to gain him credit, promises the seller, "If he does not pay you, I will," this is a collateral undertaking and must be in writing; but if he says, "Let him have the goods and I will pay," or "I will see you paid," and credit is given to him alone, he is himself the buyer, and the undertaking is original. Goldsmith v. Erwin, 183 F.2d 432 (4th Cir. 1950).

There has been carved out an exception to this section where the promisor has such a direct, immediate, pecuniary interest in the subject matter of the principal debtor's contract so as to indicate that the guarantor has intended to adopt the original contract as his own. This exception is known as the "main purpose rule." Burlington Indus., Inc. v. Foil, 19 N.C. App. 172, 198 S.E.2d 194 (1973), aff'd, 284 N.C. 740, 202 S.E.2d 591 (1974).

North Carolina has long recognized an exception to the statute of frauds, generally referred to as either the "main purpose rule" or the "leading object rule." Generally, if it is concluded that the promisor has the requisite personal, immediate and pecuniary interest in the transaction in which a third party is the primary obligor, then the promise is said to be original rather than collateral and therefore need not be in writing to be binding. Burlington Indus., Inc. v. Foil, 284 N.C. 740, 202 S.E.2d 591 (1974); McKenzie Supply Co. v. Motel Dev. Unit 2, Inc., 32 N.C. App. 199, 231 S.E.2d 201 (1977); Bassett Furn. Indus. of N.C., Inc. v. Griggs, 47 N.C. App. 104, 266 S.E.2d 702 (1980).

The promise to pay the debt of another is outside this section and enforceable if the promise is supported by an independent and sufficient consideration running to the promisor. This rule is generally referred to as the "main purpose rule" or the "leading object rule." McKenzie Supply Co. v. Motel Dev. Unit 2, Inc., 32 N.C. App. 199, 231 S.E.2d 201 (1977).

As Where the Other Does Not Remain Liable. — The general rule is that a promise to answer for the debt, default or miscarriage of another for which that other remains liable, must be in writing to satisfy this section. It is otherwise when the other does not remain liable. Mason v. Wilson, 84 N.C. 51 (1881).

In order for the defendant to fall within the protection of the statute, it must be shown that the debt is that of a third person who still continues liable for the same. If the debt is an original obligation of the defendant, or if the creditor in accepting the promise of the defendant has released a third person who was the original debtor, the statute has no application. Sheppard v. Newton, 139 N.C. 533, 52 S.E. 143 (1905).

The statute does not forbid an oral contract to assume the debt of another who is thereupon discharged of all liability to the creditor, the promisor becoming sole debtor in his stead. Jenkins v. Holley, 140 N.C. 379, 53 S.E. 237 (1906).

What Determines Nature of Promise as Original or Collateral. — Whether a promise is an original one not coming within the provisions of this section, or a superadded one barred by the statute, does not depend altogether on the form of expression, but the situation of the parties, and whether they understood the promise to be direct or collateral, should also be considered. Dozier v. Wood, 208 N.C. 414, 181 S.E. 336 (1935).

Whether a promise is an original one not coming within the statute of frauds, or a collateral one required by this section to be in writing, is to be determined from (1) the circumstances of its making, (2) the situation of the parties, and (3) the objects sought to be accomplished. Goldsmith v. Erwin, 183 F.2d 432 (4th Cir. 1950); Burlington Indus., Inc. v. Foil, 284 N.C. 740, 202 S.E.2d 591 (1974).

The question always is what the parties mutually understood by the language, whether they understood it to be collateral or a direct promise. Davis v. Patrick, 141 U.S. 479, 12 S. Ct. 58, 35 L. Ed. 826 (1891).

A promise is an original promise not coming within the statute of frauds if the extension of credit is made to the promisor or if the contract is made for the benefit of the promisor; but if the contract is made with the third person and the promise constitutes a separate and independent contract under which the promisor agrees to pay upon default of the primary debtor, the promise is a collateral agreement and comes within the statute. Balentine v. Gill, 218 N.C. 496, 11 S.E.2d 456 (1940).

Where there is no benefit to the one promising to answer for the debt of another, and the promise does not create an original obligation, but is a collateral promise, merely superadded to the promise of another, the original promisor remaining liable, the collateral promisor is not liable unless there is a writing, whether the promise is made when the debt is created or not. Sheppard v. Newton, 139 N.C. 533, 52 S.E. 143 (1905).

Where the promisor says to the creditor, "collect from him (the debtor) and if he fails to pay, I will," the undertaking is a collateral one, and not enforceable unless in writing. Garrett Co. v. Hamill, 131 N.C. 57, 42 S.E. 448 (1902).

A promise made at the time or before the debt is created, and where credit is given solely to the promisor, or a promise based on a new consideration between the promisor and the creditor, or a promise for the benefit of the promisor where he has a personal and pecuniary interest in the transaction in which a third party is the original obligor, has been held to be an original promise. Whitehurst v. Padgett, 157 N.C. 424, 73 S.E. 240 (1911); Warren v. White, 251 N.C. 729, 112 S.E.2d 522 (1960).

Similarly, a direct and unconditional promise by one to pay for goods furnished to a third party, made prior to the delivery of the goods, upon the faith of which the goods are delivered is an original undertaking. Morrison v. Baker, 81 N.C. 76 (1879); Garrett Co. v. Hamill, 131 N.C. 57, 42 S.E. 448 (1902).

In Hanes Funeral Home v. Spencer, 214 N.C. 702, 200 S.E. 397 (1938), evidence was held ample to support finding that undertaking by defendant's ward to pay expenses for the funeral of the wife of a close friend was an original promise not coming within the purview of this section.

The main purpose rule is applicable when a court has determined that the promisor's answering for the debt or default of another is merely incidental to his broader purposes. He is participating in the principal contract and making its obligation his own. The expected advantage to the promisor must be such as to justify the conclusion that his main purpose in making the promise is to advance his own interests. Burlington Indus., Inc. v. Foil, 284 N.C. 740, 202 S.E.2d 591 (1974); Bassett Furn. Indus. of N.C., Inc. v. Griggs, 47 N.C. App. 104, 266 S.E.2d 702 (1980).

The benefit to be derived from one's ownership of stock or holding the position of an officer or director is too indirect or remote to invoke the application of the main purpose rule. Something more — some other expected benefit or advantage to be gained by making the promise — is required to make the "main purpose rule" applicable. Burlington Indus., Inc. v. Foil, 284 N.C. 740, 202 S.E.2d 591 (1974).

Whether a promise is an original one not coming within the North Carolina Statute of Frauds, G.S. 22-1, or a collateral one required by the statute to be in writing, is to be determined from the circumstances of its making, the situation of the parties, and the objects to be accomplished; where the intent is doubtful, the solution usually lies in summoning the aid of a jury, but if there is insufficient evidence as a matter of law to bring the main purpose rule into play, the case should not be allowed to go to the jury under the theory of the main purpose rule. Watson Elec. Constr. Co. v. Summit Cos., LLC, 160 N.C. App. 647, 587 S.E.2d 87, 2003 N.C. App. LEXIS 1930 (2003).

Main Purpose Rule. — Under the main purpose rule, or the leading object rule, North Carolina has long recognized that a promise to pay the debt of another is outside the North Carolina Statute of Frauds, G.S. 22-1, and is enforceable if the promise is supported by an independent and sufficient consideration running to the promisor; generally, if it is concluded that the promisor had the requisite personal, immediate, and pecuniary interest in the transaction in which a third party is the primary obligor, then the promise is said to be original rather than collateral and therefore need not be in writing to be binding. Watson Elec. Constr. Co. v. Summit Cos., LLC, 160 N.C. App. 647, 587 S.E.2d 87, 2003 N.C. App. LEXIS 1930 (2003).

The "main purpose rule" applies only when the promisor has a direct pecuniary interest in the transaction in which a third party is the primary obligor. Harvey v. Norfolk S. Ry., 60 N.C. App. 554, 299 S.E.2d 664 (1983).

Promise to Guarantee a Promissory Note. — Creditor's complaint stated a claim upon which relief could be granted because, pursuant to the main purpose rule, the personal representative had promised to guarantee a promissory note and thus it was not within the statute of frauds. Terrell v. Kaplan, 170 N.C. App. 667, 613 S.E.2d 526, 2005 N.C. App. LEXIS 1084 (2005).

How Intent of Promisor Determined. — The intent of the promisor to become bound may be shown by the surrounding circumstances and other transactions or written communications between the creditor and the promisor. Hickory Novelty Co. v. Andrews, 188 N.C. 59, 123 S.E. 314 (1924).

Anything which shows the intention or the actual contract of the parties is material, and any evidence which goes to show the real intention of the parties is admissible whether it be by way of conduct or documentary in nature in order to determine whether a promise is an original one not coming within the provisions of this section, or a superadded one barred by this section. Goldsmith v. Erwin, 183 F.2d 432 (4th Cir. 1950).

Effect of New Consideration. — Where the party promising to pay a debt receives a new and original consideration from the debtor for his promise, this section does not apply. Daniels v. Duck Island, Inc., 212 N.C. 90, 193 S.E. 7 (1937). See Cooper v. Chambers, 15 N.C. 261 (1833); Mason v. Wilson, 84 N.C. 51 (1881); Whitehurst v. Hyman, 90 N.C. 487 (1884); Hasty Mercantile Co. v. Bryant, 186 N.C. 551, 120 S.E. 200 (1923); Taylor v. Lee, 187 N.C. 393, 121 S.E. 659 (1924); Hickory Novelty Co. v. Andrews, 188 N.C. 59, 123 S.E. 314 (1924). And this is true even where the benefit of the consideration for the promise accrues to a person other than the promisor. Gainesville & Alachua Hosp. Ass'n v. Hobbs, 153 N.C. 188, 69 S.E. 79 (1910). But see Mezzanotte v. Freeland, 20 N.C. App. 11, 200 S.E.2d 410 (1973); 284 N.C. 616, 201 S.E.2d 689 (1974), where it is said that a new consideration does not take the promise out of the operation of the statute.

The mere fact that there may be a new consideration for the oral promise of a defendant to pay the subsisting debt of another is not sufficient of itself to take the promise out of the prohibition of the statute of frauds. To say that any consideration will take a promise based thereon out of the statute is to make the statute useless. For if there is no consideration the promise is invalid without the statute. The statute is aimed at what were valid contracts; that is to say, it makes invalid, contracts not in writing which would otherwise have been valid. Myers v. Allsbrook, 229 N.C. 786, 51 S.E.2d 629 (1949).

Statement of Consideration Need Not Be Written. — Under this section, the consideration for a promise to answer need not be contained in the writing. Green v. Thornton, 49 N.C. 230 (1856); Standard Supply Co. v. Person, 154 N.C. 456, 70 S.E. 745 (1911).

Paper Writing Not Supporting Action. — A paper writing signed by defendant stated that he owed a certain sum to a named person and contained the words "I agree to Ed Deaton [plaintiff] $1000 of this amount when I pay off." It was held that the paper writing was incomplete and uncertain in meaning and was not a written special promise to answer the debt of another so as to enable plaintiff to maintain an action on it. Deaton v. Coble, 245 N.C. 190, 95 S.E.2d 569 (1956).

Facts Showing Promise Within Statute. — Where a check given by an automobile retailer to plaintiff in payment for a car was returned unpaid, where defendant, who was the debtor's brother, and who was handling the business during debtor's illness, told plaintiff to redeposit the check in about two weeks and that if it were not then paid by the bank he would send plaintiff a cashier's check for part and a personal check for the balance, and where it was alleged that after the debtor's death the defendant and two others purchased the business, but it was not alleged that at the time of the promise defendant contemplated purchasing the business or any interest therein, it was held that while the evidence was sufficient to justify a finding that defendant personally promised to pay the check if his brother's funds were insufficient, and plaintiff's forbearance to take any action on the check for a period of two weeks was sufficient consideration for the promise, there was no allegation that the defendant made the promise to obtain any personal advantage from such forbearance, and therefore the promise came within the statute of frauds, and defendant's motion to nonsuit was properly allowed. Myers v. Allsbrook, 229 N.C. 786, 51 S.E.2d 629 (1949).

Question for Jury as to Whether Original Promise Covered Second Transaction. — Where evidence tended to show that defendants ordered two or three cars of lumber, both defendants being present and promising to be personally responsible therefor, and after the first car was shipped, one of defendants went to plaintiff and told him to ship another car under the same arrangements, it was sufficient to be submitted to the jury on the question whether the original promise of both defendants, made when both were present, covered the second car as well as the first. Brown v. Benton, 209 N.C. 285, 183 S.E. 292 (1935).

B. Illustrative Cases.

A promise to pay a decedent's debts must be in writing when such debts are generally charged to the decedent's estate. Parrish Funeral Home v. Pittman, 104 N.C. App. 268, 409 S.E.2d 327 (1991).

Promise to Pay Funeral Expenses. — Defendant's alleged promise to pay funeral expenses for his deceased father if the estate did not was a promise to pay the debt of another, which is void by law unless in writing. Parrish Funeral Home v. Pittman, 104 N.C. App. 268, 409 S.E.2d 327 (1991), holding, however, that as defendants did not specifically plead the statute of frauds, it was not available as a defense.

Promise to Pay Out of Money Placed in Hands of Promisor by Debtor. — While the statute of frauds does not apply to an oral promise to pay the debt of another out of money or property which the debtor has placed in the hands of the promisor for the purpose of paying the debt, evidence tending to show that the debtor entrusted certain funds to the promisor for the purpose of carrying on the debtor's business, without evidence that he entrusted the funds for the specific purpose of paying debtor's debts, is insufficient to bring the promise within this rule. Myers v. Allsbrook, 229 N.C. 786, 51 S.E.2d 629 (1949).

Where purchaser orally agrees in consideration of conveyance to him of property to pay certain debts of his vendor due to a third person, the promise is original and not within the statute. Rice v. Carter, 33 N.C. 298 (1850); Stanly v. Hendricks, 35 N.C. 86 (1851).

Parol Assumption of Mortgage Debt. — A promise by a grantee of mortgaged land to assume and pay the amount of the mortgage is not a promise to pay the debt of another required by this section to be in writing, but is a direct obligation of the grantee supported by sufficient consideration. Parlier v. Miller, 186 N.C. 501, 119 S.E. 898 (1923).

Agreement to Prevent Sale of Land. — An agreement in consideration of the extension of an option that the defendant will pay a certain mortgage note owned by the plaintiff or otherwise prevent the sale of the land is not a promise to answer for the debt, etc., of another, within this section. Whedbee v. Ruffin, 189 N.C. 257, 126 S.E. 616 (1925).

Promise to Guarantee Safety of Money. — An oral promise to guarantee the safety of money placed in the promisor's hands for investment is not an agreement to answer for the debt of another within the meaning of this section. Partin v. Prince, 159 N.C. 553, 75 S.E. 1080 (1912).

The obligation of one as guarantor of payment must be evidenced and established by a written agreement, or some written note or memorandum signed by him or some person authorized to sign for him. Standard Supply Co. v. Finch, 147 N.C. 106, 60 S.E. 904 (1908); Hickory Novelty Co. v. Andrews, 188 N.C. 59, 123 S.E. 314 (1924).

What Amounts to Contract of Guaranty. — A telegram that the debtor is a reliable person and that any justifiable claims will be taken care of is insufficient to establish a contract of guaranty or a promise to answer for the debt, etc., of another, in the absence of a promise to pay the debt if the debtor does not pay. Fain Grocery Co. v. Early & Daniels Co., 181 N.C. 459, 107 S.E. 497 (1921).

Where a writing or notation is not a continuing guaranty, each order being a separate and independent transaction, the defendant is bound only for the order upon which his guaranty appears. Gennett v. Lyerly, 207 N.C. 201, 176 S.E. 275 (1934).

Goods Furnished to Son on Father's Credit. — If goods are furnished to a son upon the promise and credit of the father, the promise need not be in writing; but if the son was the principal debtor and the father merely a surety, the promise must be in writing. White v. Tripp, 125 N.C. 523, 34 S.E. 686 (1899).

Goods Shipped to Business Run in Father's Name by Son. — Where a business run in the name of J. W. J. was in charge of W. P. J., J. W. J.'s son, and J. W. J. being desirous of having goods shipped to W. P. J. permitted them to be shipped in the name of J. W. J. & Son, saying to plaintiff, "you won't lose anything by it," and a payment on account was made by "J. W. J. & Son," this section was held inapplicable. Noland Co. v. Jones, 211 N.C. 462, 190 S.E. 720 (1937).

A parol promise by owners of building to pay materialmen amount due them by contractor cannot form the basis of a claim of lien by virtue of this section. Roberts & Johnson Lumber Co. v. Horton, 232 N.C. 419, 61 S.E.2d 100 (1950).

Agreement to Pay Balance Due from Contractors by Their Surety. — Plaintiff held assignments covering all funds to become due under a building contract, and was entitled to apply such funds to the extinguishment of claims it held for advancements made to carry on the work. Defendant, surety on the contractors' bond, orally agreed that if allowed to use part of the money received by plaintiff, on a payment under the contract, to pay claims for labor and materials so the construction could be carried on without going outside of the funds derived from the work, it would pay the balance due plaintiff from the contractors. It was held that such agreement was not within this section. National Sur. Co. v. Jackson County Bank, 20 F.2d 644 (4th Cir. 1927); Warren v. White, 251 N.C. 729, 112 S.E.2d 522 (1960).

Contract to Pay for Labor and Materials Furnished on Airplanes. — A cause of action based upon an original contract of a corporation, made for it in its name by its president, to pay for labor and materials furnished on airplanes, was not within the provisions of this section. Piedmont Aviation, Inc. v. S & W Motor Lines, Inc., 262 N.C. 135, 136 S.E.2d 658 (1964).

President and Principal Stockholder Promising Personal Liability. — This section does not apply to representations by the president and principal stockholder of a corporation that he, personally, in addition to the corporation, would be obligated for the payment of the contract price for certain construction work, which representations were the agreement upon which plaintiffs accepted and performed the contract, since such agreement involves an original promise or undertaking on the part of the president at the time credit was extended. May v. Charles C. Haynes Jr. Constr. Co., 252 N.C. 583, 114 S.E.2d 271 (1960).

Agreement of Stockholders to Be Responsible for Merchandise. — Defendants agreed orally to be personally responsible for merchandise shipped to a corporation of which they were the main stockholders and which they later took over. It was held that the agreement was an original promise not coming within the statute of frauds. Brown v. Benton, 209 N.C. 285, 183 S.E. 292 (1935).

A promise by the president of a bank to become personally liable for a deposit when supported by a new and independent consideration constituted an original undertaking by him, and the agreement did not come within the provisions of this section. Dillard v. Walker, 204 N.C. 16, 167 S.E. 636 (1933).

The guaranty of payment of a deposit made by the vice-president, director and stockholder of the bank was an original promise to answer for the debt, upon sufficient consideration, and did not come within the provisions of this section, and upon the insolvency of the bank and loss to the depositor, the plea of the statute of frauds was not a valid defense. Garren v. Youngblood, 207 N.C. 86, 176 S.E. 252 (1934).

The president and treasurer of a corporation who has no personal, immediate and pecuniary benefit in the purchase of materials by the corporation is not an original promisor under this section and may not be held personally liable for the purchase price because of verbal promises to answer for the benefit made in his behalf by the secretary for the corporation as his alleged agent. Gennett v. Lyerly, 207 N.C. 201, 176 S.E. 275 (1934).

An oral guarantee of genuineness or validity of a note and the liability of the maker to pay it, made by the holder upon a transfer of it for value, is not a promise contemplated by this section to be in writing. Adcock v. Fleming, 19 N.C. 225 (1837); Ashford v. Robinson, 30 N.C. 114 (1847); Rowland v. Rorke, 49 N.C. 337 (1857).

Agreement to Furnish Merchandise for Use on Farm. — Evidence on defendant's statements to plaintiff merchant at the time plaintiff agreed to furnish certain merchandise for use on defendant's farm is held susceptible of the interpretation that defendant's promise to pay therefor was an original promise not coming within this section, and not a superadded one barred by the statute, and the question of interpretation should have been submitted to the jury. Dozier v. Wood, 208 N.C. 414, 181 S.E. 336 (1935).

Promise to Save Landlord Releasing Lien from Harm on Appeal Bond. — One financially interested in a crop induced the landlord to part with his lien, in order that the tenant might retain possession, and to sign an appeal bond of the tenant, and promised to save the landlord from harm thereon. The landlord was required to pay the bond. It was held that the release of the landlord's lien was sufficient consideration for the promise to save from harm, and the transaction was not within this section. Jennings v. Keel, 196 N.C. 675, 146 S.E. 716 (1929).

Persons who sign a note with the original makers, the note being complete except for the insertion of the name of the payee, may not contend that their obligation was to answer on a special promise for the debt of another within the protection of the statute of frauds, since the writing is a sufficient memorandum within the purview of this section. Jones v. Jones, 268 N.C. 701, 151 S.E.2d 587 (1966).

A letter written by defendant as president of a corporation would be insufficient to constitute a definite promise to answer for the debt of another within the meaning of this section where the letter does not establish what amount the defendant would pay plaintiff, the date payment would be made, or the event that would determine when payment would be due. Marvel Lamp Co. v. Capel, 45 N.C. App. 105, 262 S.E.2d 368, cert. denied, 300 N.C. 197, 269 S.E.2d 617 (1980).

Promises by Stockholders, Officers, or Directors to Pay Debt of Corporation. — When the "main purpose rule" is applied to promises by stockholders, officers, or directors, to pay a debt of the corporation, it may be said that the promise is original where the promisor's primary object was to secure some direct and personal benefit from the performance by the promisee of his contract with the corporation, or from the latter's refraining from exercising against the corporation some right existing in him by virtue of the contract. Bassett Furn. Indus. of N.C., Inc. v. Griggs, 47 N.C. App. 104, 266 S.E.2d 702 (1980).

The benefit to the promisor is to be distinguished from the indirect benefit which would accrue to him merely by virtue of his position as a stockholder, officer, or director. If the benefit accruing is direct and personal, then the promise is original within the rule above discussed, and the validity thereof is not affected by the statute of frauds. Bassett Furn. Indus. of N.C., Inc. v. Griggs, 47 N.C. App. 104, 266 S.E.2d 702 (1980).

In an action upon an oral guaranty agreement, only indirect benefit accumulated to the guarantor, the corporation debtor's operating officer and a stockholder; she did not have the required direct interest in the company's transactions to invoke application of the "main purpose" doctrine and take the agreement out of the statute of frauds. Tyson Foods, Inc. v. Ammons, 75 N.C. App. 548, 331 S.E.2d 208 (1985).

Promise of a corporate chairman who was the main stockholder in a school to stand good for the debt of the school to be incurred for the printing of catalogues was not in writing and was within the statute of frauds, but since the art studio which had contracted in its name for the printing offered evidence to invoke the application of the "main purpose rule," which is a well-known exception to the rule requiring that such promises be evidenced by a written memorandum, the question should have gone to the jury. Stuart Studio, Inc. v. National School of Heavy Equip., Inc., 25 N.C. App. 544, 214 S.E.2d 192 (1975).

Agreement to Assume Indebtedness for Equipment Installed in Restaurant. — An agreement whereby the purchaser of a restaurant assumed the original owner's indebtedness for equipment installed in the restaurant, and the seller of the equipment released the original owner from liability, was neither a promise to answer for the debt of another nor a contract for the sale of goods for $500 or more, and the statute of frauds did not apply. Thompson & Little, Inc. v. Colvin, 46 N.C. App. 774, 266 S.E.2d 46 (1980).

Testimony of Promise to Pay Former Wife's Debt to Plaintiff Allowed. — Trial court did not err in allowing testimony of oral communications concerning defendant's promise to pay former wife's debt to plaintiff; defendant's promise constituted an original promise, and therefore was not subject to the writing requirement where defendant promised plaintiff that he would make all of the monthly payments on the mortgage note; furthermore, he made the agreement directly with plaintiff, rather than solely with former wife to pay off her debt to her mother, and defendant's promise to plaintiff was supported by independent consideration; namely, plaintiff pledged her own residence as collateral and obtained for defendant a $25,000 loan. Effler v. Pyles, 94 N.C. App. 349, 380 S.E.2d 149 (1989).

Genuine Issues of Material Fact Found. — Trial court erred in granting the owners' summary judgment motion as to an oral guaranty because there were genuine issues of material fact as to whether an oral guaranty was given and whether the main purpose rule was applicable, which would take the agreement out of the North Carolina Statute of Frauds, G.S. 22-1. Watson Elec. Constr. Co. v. Summit Cos., LLC, 160 N.C. App. 647, 587 S.E.2d 87, 2003 N.C. App. LEXIS 1930 (2003).

§ 22-2. Contract for sale of land; leases.

All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration; and all other leases and contracts for leasing lands exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized. (29 Charles II, c. 3, ss. 1, 2, 3; 1819, c. 1016, P.R.; 1844, c. 44; R.C., c. 50, s. 11; 1868, c. 156, ss. 2, 33; Code, ss. 1554, 1743; Rev., s. 976; C.S., s. 988.)

Cross References. — As to transfers of registered land, see G.S. 43-38. As to conveyances, contracts to convey options and leases of land, see G.S. 47-18.

Legal Periodicals. — For discussion of effect of this section upon mortgage deeds absolute in form, see 26 N.C.L. Rev. 405 (1948).

For note on recovery of payments by vendee under contract void under statute of frauds, see 30 N.C.L. Rev. 292 (1952).

For note on rights of lessees under oral leases, see 31 N.C.L. Rev. 498 (1953).

For comment on parol boundary settlements, see 40 N.C.L. Rev. 304 (1962).

For note on recovery by third party beneficiary on quantum meruit, see 41 N.C.L. Rev. 890 (1963).

For article on options to purchase real property in North Carolina, see 44 N.C.L. Rev. 63 (1965).

For article concerning the quest for clear land titles in North Carolina, see 44 N.C.L. Rev. 89 (1965).

For note on the sufficiency of a will as a memorandum for purposes of the statute of frauds, see 54 N.C.L. Rev. 976 (1976).

For article, "Future Advances and Title Insurance Coverage," see 15 Wake Forest L. Rev. 329 (1979).

For comment on the seal in North Carolina and the need for reform, see 15 Wake Forest L. Rev. 251 (1979).

For survey of 1982 law on property, see 61 N.C.L. Rev. 1171 (1983).

For note on waiver of closing date in land sales contracts in North Carolina, in light of Fletcher v. Jones, 314 N.C. 389, 333 S.E.2d 731 (1985), see 8 Campbell L. Rev. 546 (1986).

For article, "Private Land Use Controls: Enforcement Problems with Real Covenants and Equitable Servitudes in North Carolina," see 22 Wake Forest L. Rev. 749 (1987).

For article, "The Regulation of Contractual Change: A Guide to No Oral Modification Clauses for North Carolina Lawyers," see 81 N.C.L. Rev. 2239 (2003).

CASE NOTES

I. In General.
II. What Constitutes an Interest in or Concerning Land.
III. Sufficiency of Compliance with Section.
  A. In General.
  B. The Signature.
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IV. Part Performance.
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I. IN GENERAL.

Purpose of Section Is to Prevent Fraud. — Contracts within the meaning of this section were required to be in writing, to prevent frauds and perjuries. Winberry v. Koonce, 83 N.C. 351 (1880).

This section will not prevent an unwritten promise from being the basis for an action to cancel a deed where the promise was merely a device to accomplish fraud, and the relief sought is not to enforce the promise or to recover damages for its breach. Mitchell v. Mitchell, 206 N.C. 546, 174 S.E. 447 (1934).

A suitor will not be permitted to make use of the statute of frauds, not to prevent a fraud upon himself, but to commit a fraud upon his adversary. Johnson v. Noles, 224 N.C. 542, 31 S.E.2d 637 (1945).

The statute of frauds was designed to guard against fraudulent claims supported by perjured testimony; it was not meant to be used by defendants to evade an obligation based on a contract fairly and admittedly made. House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

Construction of Section. — This section has not been given a literal or narrow construction. The decisions of the Supreme Court have consistently given that interpretation which would accomplish the purpose declared in the English statute. Even though the statute declares leases and conveyances void, that word has been regularly interpreted to mean voidable. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

This section goes to the substance as well as the remedy. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962).

Terms of Escrow Agreement Must Comply With Statute of Frauds. — Buyers of property who had used escrow funds to pay for repairs to a swimming pool were not entitled to recover additional funds from the sellers because the parties' contract clearly provided that the escrow fund would be used to pay for such repairs and did not call for additional payments; because the agreement concerned the parties' interests in the pool and thus in the house and land that were conveyed, any terms of the parties' agreement had to have been set down in writing to be valid under the statute of frauds, G.S. 22-2. Ingersoll v. Smith, 184 N.C. App. 753, 647 S.E.2d 141, 2007 N.C. App. LEXIS 1597 (2007).

Section Supplemented by § 47-18. — This section and the Connor Act, G.S. 47-18, requiring registration of deeds and leases, were designed to accomplish the same purpose. The latter act supplements the earlier act. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

Who May Plead Statute. — Any person, plaintiff or defendant, against whom enforcement is sought may plead the statute of frauds against a contract voidable under the statute of frauds. Davis v. Lovick, 226 N.C. 252, 37 S.E.2d 680 (1946), overruled on other grounds in Kent v. Humphries, 303 N.C. 675, 281 S.E.2d 43 (1981).

This section applies to executory and not executed contracts. Choat v. Wright, 13 N.C. 289 (1830); Bailey v. Bishop, 152 N.C. 383, 67 S.E. 968 (1910); Rogers v. Gennett Lumber Co., 154 N.C. 108, 69 S.E. 788 (1910); Herndon v. Durham & S.R.R., 161 N.C. 650, 77 S.E. 683 (1913); Keith Bros. v. Kennedy, 194 N.C. 784, 140 S.E. 721 (1927); Willis v. Willis, 242 N.C. 597, 89 S.E.2d 152 (1955); Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958). See Sprinkle v. Ponder, 233 N.C. 312, 64 S.E.2d 171 (1951); Dobias v. White, 240 N.C. 680, 83 S.E.2d 785 (1954); Hayman v. Stafford, 77 N.C. App. 154, 334 S.E.2d 438 (1985).

Where a contract was for the sale of an automobile in consideration of the conveyance of certain realty, and the vendor executed a good and sufficient deed, it was held that the contract was executed as to the conveyance of lands under this section. Keith Bros. v. Kennedy, 194 N.C. 784, 140 S.E. 721 (1927).

A deed is a contract which must meet the requirements of the statute of frauds. Overton v. Boyce, 26 N.C. App. 680, 217 S.E.2d 704 (1975), rev'd on other grounds, 289 N.C. 291, 221 S.E.2d 347 (1976).

A wholly unexecuted parol contract to sell land is void. Riggs v. Anderson, 260 N.C. 221, 132 S.E.2d 312 (1963).

Parol Trusts Are Valid Generally. — The seventh section of the English statute of frauds, forbidding the creation of parol trusts unless manifested and proved by some writing, is not in force in North Carolina and no statute of equivalent import has been enacted. Hence, parol trusts have a recognized place in this State's jurisprudence and have been sanctioned and upheld. Gaylord v. Gaylord, 150 N.C. 222, 63 S.E. 1028 (1909); Jones v. Jones, 164 N.C. 320, 80 S.E. 430 (1913); Wilson v. Jones, 176 N.C. 205, 97 S.E. 18 (1918); Kelly Springfield Tire Co. v. Lester, 192 N.C. 642, 135 S.E. 778 (1926); Winner v. Winner, 222 N.C. 414, 23 S.E.2d 251 (1942). See also Pittman v. Pittman, 107 N.C. 159, 12 S.E. 61 (1890); Cobb v. Edwards, 117 N.C. 244, 23 S.E. 241 (1895); Anderson v. Harrington, 163 N.C. 140, 79 S.E. 426 (1913); Lutz v. Hoyle, 167 N.C. 632, 83 S.E. 749 (1914); Robertson v. Bemis & Vosburgh, 226 F. 828 (E.D.N.C. 1915); Newby v. Atlantic Coast Realty Co., 182 N.C. 34, 108 S.E. 323 (1921); Blue v. Wilmington, 186 N.C. 321, 119 S.E. 741 (1923); Cunningham v. Long, 186 N.C. 526, 120 S.E. 81 (1923); Peele v. LeRoy, 222 N.C. 123, 22

S.E.2d 244 (1942); Taylor v. Addington, 222 N.C. 393, 23 S.E.2d 318 (1942); Thompson v. Davis, 223 N.C. 792, 28 S.E.2d 556 (1944); Embler v. Embler, 224 N.C. 811, 32 S.E.2d 419 (1945); Atkinson v. Atkinson, 225 N.C. 120, 33 S.E.2d 666 (1945); Carlisle v. Carlisle, 225 N.C. 462, 35 S.E.2d 418 (1945).

Parol trusts have been held valid in the following cases involving, generally, trusts in land for the benefit of others than the grantor: Hargrave v. King, 40 N.C. 430 (1848) (dictum); Cloninger v. Summit, 55 N.C. 513 (1856); Cousins v. Wall, 56 N.C. 43 (1856); Hanff v. Howard, 56 N.C. 440 (1857); Shelton v. Shelton, 58 N.C. 292 (1859); Cohn v. Chapman, 62 N.C. 92 (1867); Cobb v. Edwards, 117 N.C. 244, 23 S.E. 241 (1895); Owens v. Williams, 130 N.C. 165, 41 S.E. 93 (1902); Sykes v. Boone, 132 N.C. 199, 43 S.E. 645 (1903); Avery v. Stewart, 136 N.C. 426, 48 S.E. 775 (1904); Anderson v. Harrington, 163 N.C. 140, 79 S.E. 426 (1913); Jones v. Jones, 164 N.C. 320, 80 S.E. 430 (1913); Lutz v. Hoyle, 167 N.C. 632, 83 S.E. 749 (1914); Rush v. McPherson, 176 N.C. 562, 97 S.E. 613 (1918); Cunningham v. Long, 186 N.C. 526, 120 S.E. 81 (1923); Thompson v. Davis, 223 N.C. 792, 28 S.E.2d 556 (1944); Embler v. Embler, 224 N.C. 811, 32 S.E.2d 619 (1945); Carlisle v. Carlisle, 225 N.C. 462, 35 S.E.2d 418 (1945); and in these cases involving, generally, division of profits arising from the disposition of land: Michael v. Foil, 100 N.C. 178, 6 S.E. 264 (1888); Hunt v. Hunt, 261 N.C. 437, 135 S.E.2d 195 (1964); Hines v. Tripp, 263 N.C. 470, 139 S.E.2d 545 (1965); Grady v. Faison, 224 N.C. 567, 31 S.E.2d 760 (1944); Chason v. Marley, 224 N.C. 844, 32 S.E.2d 652 (1945); Jamerson v. Logan, 228 N.C. 540, 46 S.E.2d 561 (1948); Shepherd v. Duke Power Co., 140 F. Supp. 27 (M.D.N.C. 1956).

This section has no application to parol trusts. Hargrave v. King, 40 N.C. 430 (1848); Cloninger v. Summit, 55 N.C. 513 (1856); Cousins v. Wall, 56 N.C. 43 (1856); Hanff v. Howard, 56 N.C. 440 (1857); Riggs v. Swann, 59 N.C. 118 (1860); Cobb v. Edwards, 117 N.C. 244, 23 S.E. 241 (1895); Owens v. Williams, 130 N.C. 165, 41 S.E. 93 (1902); Sykes v. Boone, 132 N.C. 199, 43 S.E. 645 (1903); Avery v. Stewart, 136 N.C. 426, 48 S.E. 775 (1904); Russell v. Wade, 146 N.C. 116, 59 S.E. 345 (1907); Anderson v. Harrington, 163 N.C. 140, 79 S.E. 426 (1913); Jones v. Jones, 164 N.C. 320, 80 S.E. 430 (1913); Brogden v. Gibson, 165 N.C. 16, 80 S.E. 966 (1914); Lutz v. Hoyle, 167 N.C. 632, 83 S.E. 749 (1914); Boone v. Lee, 175 N.C. 383, 95 S.E. 657 (1918); Newby v. Atlantic Coast Realty Co., 182 N.C. 34, 108 S.E. 323 (1921); Peele v. LeRoy, 222 N.C. 123, 22 S.E.2d 244 (1942); Thompson v. Davis, 223 N.C. 792, 28 S.E.2d 556 (1944); Embler v. Embler, 224 N.C. 811, 32 S.E.2d 619 (1945). See, for example, the language of Pearson, C.J., in Shelton v. Shelton, 58 N.C. 292 (1859), quoted with approval in 311 N.C. 755, 321 S.E.2d 133 (1984), and Jamerson v. Logan, 228 N.C. 540, 46 S.E.2d 561 (1948).

State courts have tried to avoid the sometimes harsh results that a strict application of the statute of frauds would bring to unknowing and uneducated persons. It has been avoided on occasion by the application of a parol trust. Britt v. Allen, 21 N.C. App. 497, 204 S.E.2d 903 (1974).

Nor does this section prohibit the establishment by parol evidence. Shelton v. Shelton, 58 N.C. 292 (1859); Riggs v. Swann, 59 N.C. 118 (1860); Jones v. Jones, 164 N.C. 320, 80 S.E. 430 (1913); Thompson v. Davis, 223 N.C. 792, 28 S.E.2d 556 (1944). And in Thompson v. Davis it is further stated (223 N.C. at p. 794): "Parol evidence introduced to establish such a trust does not violate the rule of evidence prohibiting the admission of parol evidence to contradict, alter or explain a written instrument, since such is not its purpose or effect." But the evidence must be clear, strong and convincing. Jefferson Standard Life Ins. Co. v. Morehead, 209 N.C. 174, 183 S.E. 606 (1935).

Thus, parol trusts remain as at common law. Shelton v. Shelton, 58 N.C. 292 (1859); Pittman v. Pittman, 107 N.C. 159, 12 S.E. 61 (1890); Anderson v. Harrington, 163 N.C. 140, 79 S.E. 426 (1913); Lutz v. Hoyle, 167 N.C. 632, 83 S.E. 749 (1914); Cunningham v. Long, 186 N.C. 526, 120 S.E. 81 (1923); Peele v. LeRoy, 222 N.C. 123, 22 S.E.2d 244 (1942).

But Must Be Declared Prior to or Contemporaneously with Transfer of Legal Title. Owens v. Williams, 130 N.C. 165, 41 S.E. 93 (1902) (prior parol declaration and land conveyed pursuant thereto); Sykes v. Boone, 132 N.C. 199, 43 S.E. 645 (1903); Varnell v. Henry M. Milgrom, Inc., 78 N.C. App. 451, 337 S.E.2d 616 (1985); Howard-Green Elec. Co. v. Chaney & James Constr. Co., 12 N.C. App. 63, 182 S.E.2d 601 (1971).

A declaration is said to be contemporaneous, in the sense that it is a part of the same transaction in which the sale is accomplished. Kelly v. McNeill, 118 N.C. 349, 24 S.E. 738 (1896).

For cases stating only that the declaration must be contemporaneous, see Riggs v. Swann, 59 N.C. 118 (1860) ("at the time the legal title passes"); Pittman v. Pittman, 107 N.C. 159, 12 S.E. 61 (1890); Blackburn v. Blackburn, 109 N.C. 488, 13 S.E. 937 (1891); Hamilton v. Buchanan, 112 N.C. 463, 17 S.E. 159 (1893) ("at the time of the sale"); Peele v. LeRoy, 222 N.C. 123, 22 S.E.2d 244 (1942). But see Cobb v. Edwards, 117 N.C. 244, 23 S.E. 241 (1895), and Embler v. Embler, 224 N.C. 811, 32 S.E.2d 619 (1945).

If declared subsequent to the transmission of title, parol trusts will not be upheld. Smiley v. Pearce, 98 N.C. 185, 3 S.E. 631

(1887); Pittman v. Pittman, 107 N.C. 159, 12 S.E. 61 (1890); Blount v. Washington, 108 N.C. 230, 12 S.E. 1008 (1891); Hamilton v. Buchanan, 112 N.C. 463, 17 S.E. 159 (1893) (invalid under statute of frauds); Cobb v. Edwards, 117 N.C. 244, 23 S.E. 241 (1895); Embler v. Embler, 224 N.C. 811, 32 S.E.2d 619 (1945); Loftin v. Kornegay, 225 N.C. 490, 35 S.E.2d 607 (1945) (void under statute of frauds). It was said in Kelly v. McNeill, 118 N.C. 349, 24 S.E. 738 (1896), "Subsequent agreements by parol are void, under the statute of frauds, whether made the next moment or the next year."

After title to real property has passed, any oral agreement to engraft a trust thereon falls within the statute of frauds, and no action for a breach thereof can be maintained. Humphrey v. Faison, 247 N.C. 127, 100 S.E.2d 524 (1957).

Moreover, Parol Trust in Favor of Grantor Is Invalid. — Upon the creation of parol trusts, the authorities seem to have declared or established the limitation that except in cases of fraud, mistake or undue influence, a parol trust, to arise by reason of the contract or agreement of the parties thereto, will not be set up or engrafted in favor of the grantor upon a written deed conveying to the grantee the absolute title, and giving clear indication on the face of the instrument that such a title was intended to pass. Gaylord v. Gaylord, 150 N.C. 222, 63 S.E. 1028 (1909); Jones v. Jones, 164 N.C. 320, 80 S.E. 430 (1913); Colonial Trust Co. v. Sterchie Bros., 169 N.C. 21, 85 S.E. 40 (1915); Campbell v. Sigmon, 170 N.C. 348, 87 S.E. 116 (1915); Walters v. Walters, 171 N.C. 312, 88 S.E. 438 (1916); Walters v. Walters, 172 N.C. 328, 90 S.E. 304 (1916); Chilton v. Smith, 180 N.C. 472, 105 S.E. 1 (1920); Swain v. Goodman, 183 N.C. 531, 112 S.E. 36 (1922); Blue v. Wilmington, 186 N.C. 321, 119 S.E. 741 (1923); Williams v. McRackan, 186 N.C. 381, 119 S.E. 746 (1923) (concurring opinion by Clark, C.J., referring to Gaylord v. Gaylord, supra, as "well reasoned and clearly enunciated and ... recognized as a leading case ..."); Kelly Springfield Tire Co. v. Lester, 192 N.C. 642, 135 S.E. 778 (1926); Wilson v. Crab Orchard Dev. Co., 276 N.C. 198, 171 S.E.2d 873 (1970); Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969); 276 N.C. 198, 171 S.E.2d 873 (1970); Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967); Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967); Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967); Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969); 276 N.C. 198, 171 S.E.2d 873 (1970); Pritchard v. Mitchell, 139 N.C. 54, 51 S.E. 783 (1905); Cooper v. McKinnon, 122 N.C. 447, 29 S.E. 417 (1898).

Parol trusts will not be permitted or established by reason of contemporaneous parol contracts and agreements between the parties when the same are in direct conflict with the expressed stipulations of the written deed and the entire purport of the instrument. In such case and to that extent the doctrine of parol trusts is subordinated to another well-recognized principle of law, that when parties have formally and explicitly expressed their entire contract in writing, the same shall not be contradicted or changed by contemporaneous stipulations and agreements resting in parol. Gaylord v. Gaylord, 150 N.C. 222, 63 S.E. 1028 (1909). See also, 35 A.L.R. 285 and 33 N.C.L. Rev. 227 (1955).

It was no doubt in deference to the principle that a parol trust will not be set up in favor of the grantor upon a written deed conveying to the grantee the absolute title, that a verdict was rendered in favor of defendant grantee in the instant case, where the issue was addressed to the interest alleged in favor of the grantor in the deed; but as to those who were not directly parties to the instrument it is well established that a parol trust of this kind may be established by parol declarations contemporary with the making of the deed or prior thereto and existent at the time the same was executed and title passed. Jones v. Jones, 164 N.C. 320, 80 S.E. 430 (1913).

The qualification that a parol trust cannot be established in favor of the grantor without an allegation of fraud or mistake stands upon a different footing and has no application to the facts in the instant case in which the trust was not sought to be established and enforced by the grantor, but by others not parties to the deed. Thompson v. Davis, 223 N.C. 792, 28 S.E.2d 556 (1944).

If, notwithstanding the solemn recitals and covenants in a deed, the grantor could show a parol trust in himself it would virtually do away with the statute of frauds and would be a most prolific source of fraud and litigation. Campbell v. Sigmon, 170 N.C. 348, 87 S.E. 116 (1915).

A parol trust cannot be established between the parties in favor of the grantor in a deed, when the effect will be to contradict or change by a contemporaneous oral agreement the written contract clearly and fully expressed. To permit the terms of a solemn conveyance, absolute on its face, to be contradicted by a contemporaneous parol agreement would be in the teeth of the letter and the intent of the statute of frauds. Chilton v. Smith, 180 N.C. 472, 105 S.E. 1 (1920).

Parol trusts were not raised in favor of the grantor in the following cases involving, generally, parol agreements between grantor and grantee by which the grantee was to reconvey: Campbell v. Campbell, 55 N.C. 364 (1856) (agreement void under the statute of frauds); Bonham v. Craig, 80 N.C. 224 (1879); Campbell v. Sigmon, 170 N.C. 348, 87 S.E. 116 (1915); Newton v. Clark, 174 N.C. 393, 93 S.E. 951

(1917); Chilton v. Smith, 180 N.C. 472, 105 S.E. 1 (1920); Swain v. Goodman, 183 N.C. 531, 112 S.E. 36 (1922) (parol promise in contravention of statute of frauds); Wolfe v. North Carolina Joint Stock Land Bank, 219 N.C. 313, 13 S.E.2d 533 (1941); Ebert v. Disher, 216 N.C. 36, 3 S.E.2d 301; Powell Bros. v. McMullan Lumber Co., 153 N.C. 52, 68 S.E. 926 (1910); Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969); 276 N.C. 198, 171 S.E.2d 873 (1970); Pritchard v. Mitchell, 139 N.C. 54, 51 S.E. 783 (1905); Cooper v. McKinnon, 122 N.C. 447, 29 S.E. 417 (1898).

Except in cases of fraud, mistake or undue influence, parol trusts or agreements will not be set up or engrafted in favor of the grantor upon a written deed conveying to the grantee the absolute title, and giving clear indication on its face that such title was intended to pass. Rourk v. Brunswick County, 46 N.C. App. 795, 266 S.E.2d 401 (1980).

Parol trust device is used to prevent a party from retaining property unfairly after purchasing it as the agent for another party. Britt v. Allen, 27 N.C. App. 122, 218 S.E.2d 218 (1975), aff'd in part, rev'd in part, 291 N.C. 630, 231 S.E.2d 607 (1977).

Resulting Trusts. — Resulting trusts, which arise by operation of law, do not come within the statute of frauds, and may be proved by parol evidence. Wilson v. Williams, 215 N.C. 407, 2 S.E.2d 19 (1939).

The statute of frauds has no application to a resulting trust, arising while plaintiffs furnished the full purchase price for certain lots, defendants took title thereto in their own names and built a dwelling on one of the lots for plaintiffs, for which plaintiffs paid them in full, and thereafter conveyed only part of the lots to plaintiffs. Hoffman v. Mozeley, 247 N.C. 121, 100 S.E.2d 243 (1957).

This section is applicable to option contracts for the purchase of property. Craig v. Kessing, 36 N.C. App. 389, 244 S.E.2d 721 (1978), aff'd, 297 N.C. 32, 253 S.E.2d 264 (1979).

To be specifically enforceable an option-contract must meet the requirements of the statute of frauds. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

Statute Is Not Applicable to Abrogation of Contracts. — The statute of frauds applies to the making of enforceable contracts to sell or convey land, not to their abrogation. As a consequence, an executory written contract to sell or convey real property may be abandoned or canceled by mutual agreement orally expressed. Scott v. Jordan, 235 N.C. 244, 69 S.E.2d 557 (1952).

A lease which is required by the statute of frauds to be in writing may be rescinded orally by the mutual assent of both parties. Investment Properties of Asheville, Inc. v. Allen, 281 N.C. 174, 188 S.E.2d 441 (1972), rev'd on other grounds, 283 N.C. 277, 196 S.E.2d 262 (1973).

Nor to Lease for One Year. — A lease for one year need not be in writing. Carolina Helicopter Corp. v. Cutter Realty Co., 263 N.C. 139, 139 S.E.2d 362 (1964).

Applicable to Lease Greater than Three Years. — Where alleged lease was for a term greater than three years this section was applicable. Computer Decisions, Inc. v. Rouse Office Mgt. of N.C., Inc., 124 N.C. App. 383, 477 S.E.2d 262 (1996).

Even though a contract is one which would terminate at the promisee's death, the promisor may waive this feature of the contract and does so where he permits others, associated with the promisee in his lifetime in rendering the performance, to continue after his death and accepts such performance without giving notice within a reasonable time of an intention to consider the obligation as ended. Rape v. Lyerly, 287 N.C. 601, 215 S.E.2d 737 (1975).

Oral Statement of Lessor's Son-in-Law as Modifying Lease. — Where a lease for a term of five years was in writing as required by this section, an oral statement of the lessor's son-in-law forbidding lessee to have anything to do with the furnace, an appurtenance of the demised premises, could not have the effect of modifying the written lease, certainly in the absence of evidence that the son-in-law was an agent of the lessor and had legal authority to agree or assent to a change in the written lease. Rickman Mfg. Co. v. Gable, 246 N.C. 1, 97 S.E.2d 672 (1957).

Alleged oral promise of permanent employment entitling plaintiff to a lifetime lease on the property even though the lease was not in writing is void under this section. Craig v. Texaco, Inc., 218 F. Supp. 789 (E.D.N.C. 1963), aff'd, 326 F.2d 971 (4th Cir. 1964).

A contract for the construction of a house was not required to be in writing. Rankin v. Helms, 244 N.C. 532, 94 S.E.2d 651 (1956).

Written Agreement to Adopt Minor. — Where intestate made a written agreement with parents of a minor to adopt minor and make her his sole heir in consideration of the parents agreeing to the adoption, such agreement, being in writing, did not come within the provisions of this section. Chambers v. Byers, 214 N.C. 373, 199 S.E. 398 (1938).

Parol assurances made by a developer to prospective buyers regarding the general scheme or plans of development that the developer intends to pursue are admissible to establish the existence of such a scheme. Such parol evidence may be in the form of a field map, sales brochures, maps, advertising or oral statements on which purchasers relied.

River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Use of parole evidence to determine area referred to in declaration of covenants. — In determining whether subdivision common area included a certain three-acre parcel, the trial court improperly excluded evidence of statements made by agents to buyers, and should have admitted preliminary plat and landscaping plan as maps tending to identify the common area referred to in the declaration of covenants. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Parol Evidence to Establish Contract of Sale. — Under this section, parol evidence is incompetent to establish agreement to pay purchase price, so as to show that contract was one of sale and not an option, since this is an essential element of a contract of sale and purchase, and an essential element of a contract required to be in writing may not be established by parol. Kluttz v. Allison, 214 N.C. 379, 199 S.E. 395 (1938).

Effect of Noncompliance. — The contracts which are not entered into in compliance with this section are not void, but voidable merely at the instance of the party charged. And when such party takes advantage of the provisions of the statute, he repudiates the contract in its entirety and cannot derive any benefit from it. For example a vendee cannot recover the money he has paid the vendor under a parol contract which he has repudiated. Durham Consol. Land & Imp. Co. v. Guthrie, 116 N.C. 381, 21 S.E. 952 (1895). They are enforceable unless the party to be charged takes advantage of the statute. McCall v. Textile Indus. Inst., 189 N.C. 775, 128 S.E. 349 (1925).

The statute of frauds affects not only the enforcement of contracts coming within its terms but also their validity. Jamerson v. Logan, 228 N.C. 540, 46 S.E.2d 561 (1948).

Rights of Vendee under Parol Contract. — The vendor, in a parol contract to convey land, will not be permitted to evict a vendee who has entered and made improvements, until the latter has been repaid the purchase money and compensated for betterments. Union Cent. Life Ins. Co. v. Cordon, 208 N.C. 723, 182 S.E. 496 (1935). See also Dupree v. Moore, 227 N.C. 626, 44 S.E.2d 37 (1947).

Purchaser Takes with Notice of Enforceable Parol Lease. — Purchaser of real property takes with notice that the premises may be under parol lease for a term not exceeding three years, but beyond that period he is protected by provision that the lease must have been in writing. Wright v. Allred, 226 N.C. 113, 37 S.E.2d 107 (1946).

An oral agreement of arbitration as to real property cannot be enforced. Fort v. Allen, 110 N.C. 183, 14 S.E. 685 (1892).

Recovery on Quantum Meruit. — A parol contract to devise realty in consideration of personal services is unenforceable under the statute of frauds, but where the services have been rendered in reliance upon the promise to devise, the law substitutes in place of the unenforceable promise a valid promise to pay the reasonable worth of the services, and recovery may be had upon quantum meruit, the mainspring of the statute of frauds being to prevent frauds and not to promote them. Stewart v. Wyrick, 228 N.C. 429, 45 S.E.2d 764 (1947).

As to recovery on quantum meruit for services rendered pursuant to oral contract to devise, see 26 N.C.L. Rev. 417.

Failure to prove a special contract would not preclude plaintiffs from having their case submitted to the jury if their evidence was sufficient to support a recovery based on quantum meruit. Hicks v. Hicks, 13 N.C. App. 347, 185 S.E.2d 430 (1971).

Quantum meruit claim, which is implied by law rather than agreed to by the parties, is not within the statute of frauds. Moon v. Central Bldrs., Inc., 65 N.C. App. 793, 310 S.E.2d 390 (1984).

Land owned individually by one who entered into a partnership could not become a partnership asset absent some written agreement sufficient to satisfy the statute of frauds, despite G.S. 59-40(c), which recognizes that the title to real property may be in the name of one or more, but not all the partners, and G.S. 59-56, which makes a partner's interest in partnership property, even real property, a personal property interest. Ludwig v. Walter, 75 N.C. App. 584, 331 S.E.2d 177 (1985).

Illustrative Cases. — Defendant, claiming that he and his "roommate" of more than 20 years did not have a common law marriage and did not enter into a contract for the purchase of the property where they lived, correctly pled the statute of frauds and was improperly denied his motion for directed verdict. Patterson v. Strickland, 139 N.C. App. 510, 515 S.E.2d 915 (1999).

Plaintiff, alleging that she and her "roommate" of over 20 years had an agreement to jointly purchase the property where they lived was not barred by statute of frauds from recovering under a purchase-money resulting trust claim. Patterson v. Strickland, 139 N.C. App. 510, 515 S.E.2d 915 (1999).

Applied in Russos v. Bailey, 228 N.C. 783, 47 S.E.2d 22 (1948); Rochlin v. P. S. West Constr. Co., 234 N.C. 443, 67 S.E.2d 464 (1951); Darden v. Houtz, 234 F. Supp. 261 (E.D.N.C. 1964); Henry v. Shore, 18 N.C. App. 463, 197 S.E.2d 270 (1973); Britt v. Allen, 37 N.C. App. 732, 247 S.E.2d 17 (1978); Pierce v. Gaddy, 42 N.C. App. 622, 257 S.E.2d 459 (1979); Stallings v. Purvis, 42 N.C. App. 690, 257 S.E.2d 664 (1979);

Clodfelter v. Bates, 44 N.C. App. 107, 260 S.E.2d 672 (1979); Wright v. Wright, 305 N.C. 345, 289 S.E.2d 347 (1982); Bennett v. Fuller, 67 N.C. App. 466, 313 S.E.2d 597 (1984); Fletcher v. Jones, 69 N.C. App. 431, 317 S.E.2d 411 (1984); Johnson v. Brown, 71 N.C. App. 660, 323 S.E.2d 389 (1984); Carolina Bldrs. Corp. v. Howard-Veasey Homes, Inc., 72 N.C. App. 224, 324 S.E.2d 626 (1985); Britt v. Britt, 320 N.C. 573, 359 S.E.2d 467 (1987); Schafer v. Barrier Island Station, Inc., 946 F.2d 1075 (4th Cir. 1991); Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Cited in Creech v. Creech, 222 N.C. 656, 24 S.E.2d 642 (1943); Buford v. Mochy, 224 N.C. 235, 29 S.E.2d 729 (1944); Williams v. Joines, 228 N.C. 141, 44 S.E.2d 738 (1947); Perkins v. Langdon, 237 N.C. 159, 74 S.E.2d 634 (1953); Clark v. Butts, 240 N.C. 709, 83 S.E.2d 885 (1954); Douglass v. Brooks, 242 N.C. 178, 87 S.E.2d 258 (1955); Dunn v. Dunn, 242 N.C. 234, 87 S.E.2d 308 (1955); Bundy v. Ayscue, 5 N.C. App. 581, 169 S.E.2d 87 (1969); Cornatzer v. Nicks, 14 N.C. App. 152, 187 S.E.2d 385 (1972); Hoots v. Calaway, 282 N.C. 477, 193 S.E.2d 709 (1973); Overstreet v. Brookland, Inc., 52 N.C. App. 444, 279 S.E.2d 1 (1981); Preston v. Thompson, 53 N.C. App. 290, 280 S.E.2d 780 (1981); Wachovia Bank & Trust Co. v. Rubish, 306 N.C. 417, 293 S.E.2d 749 (1982); Varnell v. Henry M. Milgrom, Inc., 78 N.C. App. 451, 337 S.E.2d 616 (1985); Pee Dee Oil Co. v. Quality Oil Co., 80 N.C. App. 219, 341 S.E.2d 113 (1986); Sprouse v. North River Ins. Co., 81 N.C. App. 311, 344 S.E.2d 555 (1986); Brooks v. Hackney, 329 N.C. 166, 404 S.E.2d 854 (1991).

II. WHAT CONSTITUTES AN INTEREST IN OR CONCERNING LAND.

The authority of a duly authorized agent to contract to convey lands need not be in writing under the statute of frauds. Wellman v. Horn, 157 N.C. 170, 72 S.E. 1010 (1911); Lewis v. Allred, 249 N.C. 486, 106 S.E.2d 689 (1959).

Contract for Subdivision Services. — Statute of frauds was inapplicable to a contract implied in fact between a subdivision association and the property owners to pay for maintenance, upkeep, and operation of the roads, common areas, and recreational facilities within the subdivision because the contract claim was for services rendered to the owners and no interest in land was at issue. Miles v. Carolina Forest Ass'n, 167 N.C. App. 28, 604 S.E.2d 327, 2004 N.C. App. LEXIS 2053 (2004).

A mere contract between a broker and the owner of land to negotiate a sale of the latter's land is not required to be in writing. Carver v. Britt, 241 N.C. 538, 85 S.E.2d 888 (1955).

A restrictive covenant creates a negative easement within the statute of frauds, and cannot be proved by parol evidence. Hege v. Sellers, 241 N.C. 240, 84 S.E.2d 892 (1954).

Covenants limiting the use of real property are within the scope of the statute of frauds and the registration act. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

An easement is an interest in land and must be in writing. Shepherd v. Duke Power Co., 140 F. Supp. 27 (M.D.N.C. 1956).

An easement is an interest in land and is subject to the statute of frauds. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

Easements are interests in land and fall within the scope of this section. Mountain View, Inc. v. Bryson, 77 N.C. App. 837, 336 S.E.2d 432 (1985), cert. denied, 315 N.C. 589, 341 S.E.2d 27 (1986).

Oral agreements relating to an easement, reached before the creation of the easement, are not directly enforceable unless they are in writing. Mountain View, Inc. v. Bryson, 77 N.C. App. 837, 336 S.E.2d 432 (1985), cert. denied, 315 N.C. 589, 341 S.E.2d 27 (1986).

An agreement disclaiming an easement by necessity is within the purview of the statute of frauds. Such an agreement is not directly enforceable unless it is in writing and is duly and properly recorded in the county where the land affected lies. Mountain View, Inc. v. Bryson, 77 N.C. App. 837, 336 S.E.2d 432 (1985), cert. denied, 315 N.C. 589, 341 S.E.2d 27 (1986).

Parol Transfer of Parol Contract. — A parol transfer of the interest of a purchaser of land under a parol contract is invalid. Wilkie v. Womble, 90 N.C. 254 (1884).

An agreement to buy and sell land at a profit is not a contract relating to any interest in land which is required to be in writing. It relates only to profits of the land, and is valid even though not in writing. Newby v. Atlantic Coast Realty Co., 182 N.C. 34, 108 S.E. 323 (1921).

The section contemplates those transactions in which there is a conveyance of land from one party to another; not those as to ventures for profits in realty. Newby v. Atlantic Coast Realty Co., 182 N.C. 34, 108 S.E. 323 (1921).

The statute of frauds clearly does not apply to an oral contract to divide profits from the sale of land. Bumgarner v. Tomblin, 63 N.C. App. 636, 306 S.E.2d 178 (1983).

The statute of frauds has no application to those contracts whereby two persons agreed to purchase land, either generally or as a single venture, for the purpose of reselling the same at a profit and sharing the same between them. Bumgarner v. Tomblin, 63 N.C. App. 636, 306 S.E.2d 178 (1983).

Agreement That Is Not One to Sell or

Convey Land. — Where plaintiff alleged that his vendor agreed to procure a release of the land from a prior deed of trust upon the payment by the plaintiff of a note given for the balance of the purchase price of the land, and secured by a deed of trust to his vendor, the agreement is not one to sell or convey land, or any interest in or concerning same, and does not come within the provisions of this section. Hare v. Hare, 208 N.C. 442, 181 S.E. 246 (1935).

A dower interest cannot be surrendered by parol. Houston v. Smith, 88 N.C. 312 (1883). As to abolition of dower and curtesy and right of surviving spouse to elect life estate, see §§ 29-4, 29-30.

An oral contract which undertakes to bind the plaintiff to release her dower interest in the lands of the defendant runs afoul of this section, which renders parol promises to surrender dower unenforceable. Luther v. Luther, 234 N.C. 429, 67 S.E.2d 345 (1951).

Partition. — A contract between tenants in common for the partition in lands is a contract concerning realty, within the meaning of this section. Anders v. Anders, 13 N.C. 529 (1830); Medlin v. Steele, 75 N.C. 154 (1876); Fort v. Allen, 110 N.C. 183, 14 S.E. 685 (1892); Rhea v. Craig, 141 N.C. 602, 54 S.E. 408 (1906).

A parol partition of land is a contract within the purview of this section, and is not binding. And in order for tenants in common to perfect title to the respective shares of land allotted to them by parol, it is necessary for them to go into possession of their respective shares in accordance with the agreement and to hold possession thereof under known and visible boundaries, consisting of lines plainly marked on the ground at the time of the partition, and to continue in possession openly, notoriously and adversely for twenty years. Williams v. Robertson, 235 N.C. 478, 70 S.E.2d 692 (1952).

An oral contract to give or devise real estate is void by reason of the statute of frauds, and no action for a breach thereof can be maintained. Daughtry v. Daughtry, 223 N.C. 528, 27 S.E.2d 446 (1943); Clapp v. Clapp, 241 N.C. 281, 85 S.E.2d 153 (1954); Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962); Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967). See Neal v. Wachovia Bank & Trust Co., 224 N.C. 103, 29 S.E.2d 206 (1944).

An oral agreement to devise realty is within the statute of frauds and therefore unenforceable. Gales v. Smith, 249 N.C. 263, 106 S.E.2d 164 (1958); Hicks v. Hicks, 13 N.C. App. 347, 185 S.E.2d 430 (1971).

An agreement to devise real property is within the statute of frauds. Humphrey v. Faison, 247 N.C. 127, 100 S.E.2d 524 (1957).

Upon a plea of the statute, an oral contract to convey or to devise real property may not be specifically enforced and no recovery of damages for the loss of the bargain can be predicated upon its breach. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962); Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967).

A contract to devise real property comes within the provisions of this section, and performance of services by the promisee as consideration for the contract does not take the contract out of the provisions of the section, and the promisee cannot successfully maintain an action for specific performance of the contract. Grantham v. Grantham, 205 N.C. 363, 171 S.E. 331 (1933). See also Coley v. Dalrymple, 225 N.C. 67, 33 S.E.2d 477 (1945).

Option. — Upon the plea of the statute of frauds by defendant in defense to an action on an option to sell realty, plaintiff may neither enforce the agreement nor recover damages for loss of a bargain. Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967).

Valid Written Contract to Devise Land Is Enforceable. — Although an oral contract to devise land is unenforceable, a valid written contract to devise land is enforceable in equity. Rape v. Lyerly, 287 N.C. 601, 215 S.E.2d 737 (1975).

An indivisible contract to devise real and personal property comes within the statute of frauds. Jamerson v. Logan, 228 N.C. 540, 46 S.E.2d 561 (1948); Humphrey v. Faison, 247 N.C. 127, 100 S.E.2d 524 (1957); Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962); Mansour v. Rabil, 277 N.C. 364, 177 S.E.2d 849 (1970); Hicks v. Hicks, 13 N.C. App. 347, 185 S.E.2d 430 (1971).

Agreement to Bequeath Personalty. — An agreement to devise realty is within the statute of frauds, and an agreement to bequeath personalty, simpliciter, is not. Stewart v. Wyrick, 228 N.C. 429, 45 S.E.2d 764 (1947).

Contract to Bequeath or Devise Must Be Established by Same Proof Required for Other Contracts. — An aggrieved party may recover for the breach of a contract, made upon sufficient consideration, whereby the promisor agreed to make him the beneficiary of a bequest or devise in his will, but such a contract must be established by the mode of proof legally permissible in establishing other contracts. McCraw v. Llewellyn, 256 N.C. 213, 123 S.E.2d 575 (1962).

Crops and Fruit. — Crops which are produced annually are personal chattels, and a sale of them while growing is only a sale of goods, and not a contract or sale of land, or any interest in or concerning land, under this section. Brittain v. McKay, 23 N.C. 265 (1840).

Fruits on trees cannot be reserved by the vendor by a parol agreement. Flynt v. Conrad, 61 N.C. 190 (1867).

A parol crop-sharing agreement by which certain tobacco land was to be leased and equipment, labor and supplies to be furnished by the parties did not involve an interest in land under this section and was valid. Martin v. Stiers, 165 F. Supp. 163 (M.D.N.C. 1958), aff'd, 264 F.2d 795 (4th Cir. 1959).

Parol Agreement as to Division of Profits from Sale of Land. — Where the grantor alleges that the grantee entered into a contemporaneous parol agreement to reconvey or to sell certain land and divide the profits realized from the sale, and that the grantee had sold the property, the parol agreement as to the division of profits does not involve an interest in land and does not come within the statute of frauds, and, the part of the agreement coming within the statute having been executed, the original grantor may maintain an action for an accounting to determine whether or not any profit was realized from the sale for a division under the agreement. Schmidt v. Bryant, 251 N.C. 838, 112 S.E.2d 262 (1960).

The statute of frauds does not apply where a party seeks to prove an oral agreement with respect to the disposition of proceeds from a sale of land, rather than to force or prevent conveyance of the land itself. Rongotes v. Pridemore, 88 N.C. App. 363, 363 S.E.2d 221 (1988).

Standing Timber. — A contract conveying standing timber is a contract concerning realty. Mizell v. Burnett, 49 N.C. 249 (1857); Drake v. Howell, 133 N.C. 162, 45 S.E. 539 (1903); Ward v. Gay, 137 N.C. 397, 49 S.E. 884 (1905); Ives v. Atlantic & N.C.R.R., 142 N.C. 131, 55 S.E. 74 (1906).

Growing trees are a part of the land, and a contract for the sale thereof comes within the meaning and intent of the statute of frauds. Johnson v. Wallin, 227 N.C. 669, 44 S.E.2d 83 (1947).

Standing trees on land are real property and contracts and conveyances in respect thereto are governed by the same rules applicable to other forms of real property. The statute of frauds defeats a parol conveyance or reservation of timber trees. Westmoreland v. Lowe, 225 N.C. 553, 35 S.E.2d 613 (1945).

A contract of the owner of land to sell at a stipulated price all logs which the owner should cut from the tract is not a contract affecting realty within the meaning of this section, since the cutting and delivery of the logs would constitute a conversion of the standing timber from real property into personalty. Walston v. Lowry, 212 N.C. 23, 192 S.E. 877 (1937).

Guaranty of Acreage. — A vendor's guaranty of the number of acres need not be in writing. Currie v. Hawkins, 118 N.C. 593, 24 S.E. 476 (1896); Sterne v. Benbow, 151 N.C. 460, 66 S.E. 445 (1909).

Also an agreement between vendor and purchaser that the latter shall have the land surveyed, and that if it falls short the vendor shall refund pro tanto, need not be in writing. Sherrill v. Hagan, 92 N.C. 345 (1885).

Equitable Estates. — A parol contract of sale of an equitable estate in land is void. Holmes v. Holmes, 86 N.C. 205 (1882).

Parol Release of Mortgage. — An agreement to terminate the relationship of a mortgagor and mortgagee does not fall within the intent and meaning of this section. Hence, a parol contract to release a part of the mortgaged property is valid and enforceable. Hemmings v. Doss, 125 N.C. 400, 34 S.E. 511 (1899); Stevens v. Turlington, 186 N.C. 191, 119 S.E. 210 (1923).

Where a mortgagee agreed by parol to release the mortgage to a purchaser of the land from the mortgagor, the mortgagee was held estopped to deny the validity of the agreement under the statute of frauds. Stevens v. Turlington, 186 N.C. 191, 119 S.E. 210 (1923).

An unexecuted verbal agreement, made by a mortgagee for a valuable consideration, to release a real estate mortgage does not come within the statute of frauds. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795, cert. denied, 278 N.C. 702, 181 S.E.2d 603 (1971).

Oral Agreement to Pay Off Loan and Taxes on Property. — Without any written instruments of conveyance as required by G.S. 22-2, the parents' generosity in co-signing on their son's bank loan, paying off the loan for him, and paying the property taxes on the property had to be treated as gratuitous donations rather than as loans giving rise to some type of legal or equitable interest in the garage United States v. Keller, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 97293 (W.D.N.C. Nov. 10, 2008).

Lease for One Year with Provision for Renewals. — An oral lease of realty for one year, together with provision for annual renewals for four successive years, is but a single contract, the agreement for renewal being a part of and inseparable from lease for the original term, and holding for extended term would be under the original oral lease, and contract may not be divided so as to validate it for the initial period and disregard the other portion of the contract. Wright v. Allred, 226 N.C. 113, 37 S.E.2d 107 (1946).

A parol lease for three years is not within the statute. It must be for a term exceeding three years. Smithdeal v. McAdoo, 172 N.C. 700, 90 S.E. 907 (1916).

But a parol lease agreement for more than three years is. Barbee v. Lamb, 225 N.C. 211, 34 S.E.2d 65 (1945), overruled to the extent of any inconsistency by Kent v. Humphries, 303 N.C. 675, 281 S.E.2d 43 (1981).

As Is Lease for Three Years to Commence in Futuro. — In order to determine whether a lease is for more than three years or not the computation must be made from the time of making the agreement to lease, and not from the time of its going into effect. Falkner v. Hunt, 73 N.C. 571 (1875); Mauney v. Norvell, 179 N.C. 628, 103 S.E. 372 (1920), overruled to the extent of any inconsistency by Kent v. Humphries, 303 N.C. 675, 281 S.E.2d 43 (1981).

Where the owner of land agrees to erect a certain kind of building thereon for a proposed lessee, and makes a parol lease for the rental of the property for three years to take effect upon the completion of the building, the lease for three years, to take effect in the future comes within the provisions of the statute of frauds, and where in an action thereon the lessee denies the contract of lease and pleads the statute, he may not be held liable unless it was executed in writing, or some memorandum thereof made and signed by the party to be charged therewith or by some other person by him duly authorized. Sammax Inv. Co. v. Zindel, 198 N.C. 109, 150 S.E. 704 (1930).

Lease for Duration of Life Estate. — An agreement by the remainderman to rent the locus in quo from the life tenant for the entire period of the life estate is for an indefinite term and one which may last beyond three years and therefore such agreement comes within this section. Davis v. Lovick, 226 N.C. 252, 37 S.E.2d 680 (1946), overruled to the extent of any inconsistency by Kent v. Humphries, 303 N.C. 675, 281 S.E.2d 43 (1981).

Assignment of Lease for More Than Three Years. — A verbal assignment of an unexpired lease to continue more than three years is void under this section. Alexander v. Morris, 145 N.C. 22, 58 S.E. 600 (1907).

The English statute of frauds declares void parol assignments or surrenders of leases, but the English statute was not adopted as a part of the common law of North Carolina. The North Carolina statute, embodied in this section, makes no declaration with respect to the assignment or surrender of leases when an unexpired term exceeds three years. Nevertheless, though not mentioned in either this section or G.S. 47-18, an assignment of a lease for more than three years must, to be enforceable, be in writing, and to protect against creditors or subsequent purchasers, must be recorded. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

Surrender of Lease Having Over Three Years to Run. — A parol offer to surrender a leasehold estate having more than three years to run is within the statute of frauds and cannot be specifically enforced. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

Because performance of a parol offer to surrender a leasehold estate having more than three years to run cannot be enforced so long as the contract is executory, that does not mean that a consummated surrender is invalid or that lessee may not by his conduct be estopped to deny the termination of his lease. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

Negative Easement. — A restriction on the use of land being in effect a negative easement is an interest in land required under this section to be contracted for in writing. Davis v. Robinson, 189 N.C. 589, 127 S.E. 697 (1925).

Where land in a development is sold by deeds containing certain restrictive covenants, the covenants are in the nature of an easement, and it would seem that ordinarily such easement may not be released by parol agreement. Moore v. Shore, 206 N.C. 699, 175 S.E. 117 (1934).

A negative easement clearly comes within the statute of frauds. Simmons v. Morton, 1 N.C. App. 308, 161 S.E.2d 222 (1968).

In North Carolina a negative easement comes within the statute of frauds, and it cannot be proved by parol evidence. Peoples Serv. Drug Stores, Inc. v. Mayfair, 50 N.C. App. 442, 274 S.E.2d 365 (1981).

Construction of House. — This section does not apply to the construction of a house, as compared to a house already built, because a house not-built is not an "interest in realty." Smith v. Hudson, 48 N.C. App. 347, 269 S.E.2d 172 (1980).

Party Walls. — The right to contribution for costs of a party wall is implied in law regardless of the promise; and hence enforceable notwithstanding that the agreement was not in writing. Reid v. King, 158 N.C. 85, 73 S.E. 168 (1911).

Creation of Mill Dam. — A permanent right to overflow land by the erection and maintenance of a mill dam cannot be created by parol. Bridges v. Purcell, 18 N.C. 492 (1836); Ebert v. Disher, 216 N.C. 36, 3 S.E.2d 301, petition for rehearing allowed in part, 216 N.C. 546, 5 S.E.2d 716 (1939).

Judicial Sales. — Judicial sales were not within the contemplation of the legislature at the time of making this enactment. Tate v. Greenlee, 15 N.C. 149 (1833).

Judgment. — The statute of frauds does not require that a judgment constituting a lien on land should be assigned by a written instrument. Winberry v. Koonce, 83 N.C. 351 (1880).

License to use land is not an interest in land. Thus, the statute of frauds has no application. Moon v. Central Bldrs., Inc., 65 N.C. App. 793, 310 S.E.2d 390 (1984).

III. SUFFICIENCY OF COMPLIANCE WITH SECTION.

A. In General.

No special form or instrument is required. A letter, note, bill or draft is sufficient.

Neaves v. North State Mining Co., 90 N.C. 412 (1884).

A memorandum, by its very nature, is an informal instrument, and the statute of frauds does not require that it be in any particular form. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978).

Contract May Be Partly Written and Partly Oral. — A contract for the sale of land may be partly verbal and partly in writing, unless the writing purports to embrace all the contract. Thus, where the vendor upon a conveyance by deed, verbally agreed that he would make good any deficiency in the acreage, it was held that this section did not require the agreement as to the quantity to be embraced by the written contract or deed. McGee v. Craven, 106 N.C. 351, 11 S.E. 375 (1890).

What the Writing Must Contain. — In order that a contract falling within the sphere of this section be enforceable it must appear that there is a writing containing expressly or by implication all the material terms of the alleged agreement which must have been signed as required by the section. Gwathmey v. Cason, 74 N.C. 5 (1876); Hall v. Misenheimer, 137 N.C. 183, 49 S.E. 104 (1904).

In order to constitute an enforceable contract within the provisions of this section, the written memorandum, though it may be informal, must be sufficiently definite to show the essential elements of a valid contract. It must embody the terms of the contract, names of vendor and vendee, and a description of the land to be conveyed, at least sufficiently definite to be aided by parol. Smith v. Joyce, 214 N.C. 602, 200 S.E. 431 (1938); Elliott v. Owen, 244 N.C. 684, 94 S.E.2d 833 (1956); Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967).

A memorandum or note must contain expressly or by necessary implication the essential features of an agreement to sell. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964).

Even though the contract be informally and awkwardly expressed in the writing, yet if its nature, scope and purpose clearly appear from it, there is a sufficient compliance with the requirements of this section. Mayer v. Adrian, 77 N.C. 83 (1877); Farmer v. Batts, 83 N.C. 387 (1880); Thornburg v. Masten, 88 N.C. 293 (1883); Gordon v. Avery, 102 N.C. 532, 9 S.E. 486 (1889).

The memorandum of a contract to convey realty is insufficient if no buyer therein is identified in the slightest degree. Elliott v. Owen, 244 N.C. 684, 94 S.E.2d 833 (1956).

The statute of frauds requires that all essential elements of the contract be reduced to writing. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

Where under all the circumstances the meaning of the writing including the description is clear and certain, it is sufficient to comply with the statute of frauds and bind the parties. Mezzanotte v. Freeland, 20 N.C. App. 11, 200 S.E.2d 410 (1973), cert. denied, 284 N.C. 616, 201 S.E.2d 689 (1974).

To qualify as a memorandum to take an oral lease out of the statute of frauds, the writing must, at the very least, show all of the essential elements of the agreement, and those elements set out in the writing must not contradict the terms of the oral lease sought to be proved. Kent v. Humphries, 50 N.C. App. 580, 275 S.E.2d 176, aff'd and modified, 303 N.C. 675, 281 S.E.2d 43 (1981); House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

The writing must contain a description of the land, the subject matter of the contract, either certain in itself or capable of being reduced to certainty by something extrinsic to which the contract refers. Bradshaw v. McElroy, 62 N.C. App. 515, 302 S.E.2d 908 (1983).

It Is Not Necessary for All the Provisions of a Contract to Be Set Out in a Single Instrument. — The memorandum required by the statute is sufficient if the contract provisions can be determined from separate but related writings. The writings must disclose, at least with sufficient definiteness to be aided by parol, the terms of the contract, the names of the parties, and a description of the property. Fuller v. Southland Corp., 57 N.C. App. 1, 290 S.E.2d 754, cert. denied, 306 N.C. 556, 294 S.E.2d 223 (1982).

An enforceable lease or conveyance of land need not be set out in a single instrument, but may arise from a series of separate but related letters or other documents signed by the person to be charged or his authorized agent. Satterfield v. Pappas, 67 N.C. App. 28, 312 S.E.2d 511, cert. denied, 311 N.C. 403, 319 S.E.2d 274 (1984).

The statute of frauds does not require all the provisions of the contract to be set out in a single instrument. The memorandum required by the statute is sufficient if the contract provisions can be determined from separate but related writings. Rose v. Lang, 85 N.C. App. 690, 355 S.E.2d 795 (1987).

As the essential terms of a lease do not to be contained in one writing to be valid, a new lease incorporating the description of the land contained in the old lease satisfied the Statute of Frauds as to the description of the property leased. Purchase Nursery, Inc. v. Edgerton, 153 N.C. App. 156, 568 S.E.2d 904, 2002 N.C. App. LEXIS 1073 (2002).

A check can be a sufficient memorandum, provided it contains, expressly or by necessary implication, the essential elements of an agreement to sell. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied,

294 N.C. 441, 241 S.E.2d 843 (1978).

Essential elements of an agreement to sell include a designation of the vendor, the vendee, the purchase price, and a description of the land, the subject-matter of the contract, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the contract refers. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978).

Essentials of Lease. — The essentials of a lease which must be disclosed in the memorandum with sufficient definiteness to be aided by parol evidence are: (1) the parties' names (lessor and lessee), (2) a description of the realty demised, (3) a statement of the term of the lease, and (4) the rent or other consideration. Additionally, a memorandum of lease must be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized. Fuller v. Southland Corp., 57 N.C. App. 1, 290 S.E.2d 754, cert. denied, 306 N.C. 556, 294 S.E.2d 223 (1982).

Lessee Must Show Intent to Lease. — "Negotiation Summary" outlining stages of the negotiations between the lessor and the lessee regarding a commercial lease, which did not indicate the lessee's intention to be bound to a lease, did not satisfy the statute of frauds. B & F Slosman v. Sonopress, Inc., 148 N.C. App. 81, 557 S.E.2d 176, 2001 N.C. App. LEXIS 1274 (2001), cert. denied, 355 N.C. 283, 560 S.E.2d 795 (2002).

Draft lease and letters which a bank sent to landowners during negotiations on the terms of a commercial lease did not show that the bank intended to be bound by those documents, and the trial court properly granted the bank's motion for a directed verdict on the landowners' claim alleging breach of contract because the landowners did not show that the documents satisfied the statute of frauds. Howlett v. CSB, LLC, 164 N.C. App. 715, 596 S.E.2d 899, 2004 N.C. App. LEXIS 1142 (2004), cert. denied sub nom. Williams v. CSB, LLC, — N.C. —, 604 S.E.2d 313 (2004).

Failure to Agree on Nonessential Terms. — If all essential elements of a contract to convey or lease land have been agreed upon by the parties and are contained in some writing or memoranda, signed by the party to be charged or his authorized agent, then there can still be a valid, binding contract to convey or lease land, even if there is no agreement on other nonessential terms. Satterfield v. Pappas, 67 N.C. App. 28, 312 S.E.2d 511, cert. denied, 311 N.C. 403, 319 S.E.2d 274 (1984).

The agreement must adequately express the intent and obligation of the parties. — Parol evidence cannot be received to supply anything which is wanting in the writing to make it the agreement on which the parties rely. McCraw v. Llewellyn, 256 N.C. 213, 123 S.E.2d 575 (1962); Rape v. Lyerly, 287 N.C. 601, 215 S.E.2d 737 (1975).

The writing must show the promise or obligation which the complaining party seeks to enforce. McCraw v. Llewellyn, 256 N.C. 213, 123 S.E.2d 575 (1962); Rape v. Lyerly, 287 N.C. 601, 215 S.E.2d 737 (1975).

Estoppel letter did not satisfy North Carolina's statute of frauds because the estoppel letter was signed only by plaintiff landlord, not defendant corporation, and nowhere in the letter did the corporation agree to be an assignee or ask to take over the lease by being billed or otherwise; the letter made clear that the tenant, which had been purchased by the corporation, remained as the tenant. C & H P'ship v. Shaw Indus. Group, Inc., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 27231 (M.D.N.C. May 4, 2006).

Writing Must Describe Subject Matter. — In order to take an agreement relating to land out of the statute of frauds, the writing must describe the subject matter with certainty or refer to matters aliunde from which the description can be made certain. Searcy v. Logan, 226 N.C. 562, 39 S.E.2d 593 (1946).

A memorandum or note must contain a description of the land, the subject matter of the contract, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the contract refers. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964); Mezzanotte v. Freeland, 20 N.C. App. 11, 200 S.E.2d 410 (1973), cert. denied, 284 N.C. 616, 201 S.E.2d 689 (1974).

A deed or contract to sell land must contain, among other things, sufficient description of land to be sold or conveyed, to satisfy statute of frauds. To be sufficient, description must be certain in itself or capable of being reduced to certainty by reference to something extrinsic to which contract refers. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

Trial court properly concluded that, because the deed of trust executed by borrowers contained no description of the real property, it did not meet the provisions of the statute of frauds and was void where the deed did not include a description of the real property at the time of execution, and such description was later added to the deed without the borrowers' consent or knowledge; the lender provided no legal authority for its assertion that a deed lacking legal descriptions of the real property to be conveyed could have been cured unilaterally by recording said deed with novel legal descriptions unseen by the other party. In re Hudson, 182 N.C. App. 499, 642 S.E.2d 485, 2007 N.C. App. LEXIS 689 (2007).

Statement of Time for Performance Not Necessarily Required. — A memorandum of an agreement for the sale of land is not necessarily insufficient to satisfy the requirements of the statute of frauds because the time for performance is not stated therein. In case of an executory contract of sale, where the time for the execution of the conveyance or transfer is not limited, the law implies that it is to be done within a reasonable time, and the failure to incorporate in the memorandum such a statement does not render it insufficient. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

Omission from the memorandum of time of performance is not fatal. Where no time of performance is stated, the law implies that the option must be exercised within a reasonable time. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978).

There Must Be No Patent Ambiguity. — The only requisite in evaluating the written contract, as to the certainty of the thing described, is that there be no patent ambiguity in the description. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964); Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

Property descriptions that purport to carve small tracts of land out of larger tracts must specifically identify part to be conveyed in order to comply with statute of frauds. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

When Patent Ambiguity Exists. — There is a patent ambiguity when the terms of the writing leave the subject of the contract, the land, in a state of absolute uncertainty, and refer to nothing extrinsic by which it might possibly be identified with certainty. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964); Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977); Taefi v. Stevens, 53 N.C. App. 579, 281 S.E.2d 435, cert. denied, 304 N.C. 393, 285 S.E.2d 837 (1981), modified on other grounds and aff'd, 305 N.C. 291, 287 S.E.2d 898 (1982).

When a description in a contract to convey land leaves the land in a state of absolute uncertainty, and refers to nothing extrinsic by which it might be identified with certainty, it is patently ambiguous and parol evidence is not admissible to aid the description. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976); House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

A description which leaves the subject of the contract, the land, in a state of absolute uncertainty, and which refers to nothing extrinsic by which it might possibly be identified with certainty, is patently ambiguous. Parol evidence is not admissible to aid such a description, and the instrument which contains it is void. Bradshaw v. McElroy, 62 N.C. App. 515, 302 S.E.2d 908 (1983).

Patent ambiguity is such an uncertainty appearing on face of instrument that a court, reading language in light of all facts and circumstances referred to in instrument, is unable to derive therefrom intention of the parties as to what land was to be conveyed. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

When description in contract to convey land is patently ambiguous the deed or contract is void. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

Patently ambiguous contract is void under the statute of frauds. House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

Patent Ambiguity a Question of Law. — Whether a description in a contract to convey land is patently ambiguous is a question of law. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

The question of patent ambiguity is one of law for the court. Bradshaw v. McElroy, 62 N.C. App. 515, 302 S.E.2d 908 (1983); House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

Latent Ambiguity in Description. — A description in a contract to convey land is latently ambiguous if it is insufficient in itself to identify the property but refers to something extrinsic by which identification might possibly be made. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

A description is said to be latently ambiguous if it is insufficient in itself to identify the property but refers to something extrinsic by which identification might possibly be made. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977); Taefi v. Stevens, 53 N.C. App. 579, 281 S.E.2d 435, cert. denied, 304 N.C. 393, 285 S.E.2d 837 (1981), modified, 305 N.C. 291, 287 S.E.2d 898 (1982).

A description is latently ambiguous if it is insufficient in itself to identify the property but refers to something extrinsic by which identification might possibly be made. In such case plaintiff may offer evidence, parol and other, with reference to such extrinsic matter tending to identify the property, and defendant may offer such evidence with reference thereto tending to show impossibility of identification, i.e., ambiguity. Bradshaw v. McElroy, 62 N.C. App. 515, 302 S.E.2d 908 (1983).

The description "my entire woodland" while not patently ambiguous, was latently so. Plaintiff thus could offer evidence, parol and other, which tended to identify the property. Bradshaw v. McElroy, 62 N.C. App. 515, 302 S.E.2d 908 (1983).

Where a contract incorporated by reference an external document by which identification of the land could be made certain, such internal reference rendered the contract latently, rather than patently ambiguous. House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

A description is latently ambiguous if it is insufficient, by itself, to identify the land, but refers to something external by which identification might be made. The reference must be to another document; that two documents refer to the same subject matter does not make them part of the same contract. The connection between documents must be clear and cannot be shown by extrinsic evidence. House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

Property description contained in a lease was latently rather than patently ambiguous, and the trial court should have considered extrinsic evidence in order to determine the identity of the property before ruling on the validity of the lease; therefore, the trial court erred in granting a motion by the lessor for summary judgment on the validity of the lease on the ground that the property description was insufficient as a matter of law. Elec. World, Inc. v. Barefoot, 153 N.C. App. 387, 570 S.E.2d 225, 2002 N.C. App. LEXIS 1192 (2002).

Summary judgment was improperly granted in an action seeking specific performance because a genuine issue of fact existed as to the statute of frauds, G.S. 22-2; there was a latent ambiguity due to the extrinsic means of identification, but a survey problem precluded judgment as a matter of law. Wolfe v. Villines, 169 N.C. App. 483, 610 S.E.2d 754, 2005 N.C. App. LEXIS 690 (2005).

Whether Ambiguity Is Patent or Latent Is Question of Law. — Where ambiguity exists in a property description contained in writing, it is question of law to be decided by court as to whether ambiguity is patent or latent. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

Patent and Latent Ambiguities Compared. — A patent ambiguity raises a question of construction; a latent ambiguity raises a question of identity. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

If the ambiguity is latent, evidence dehors the contract is both competent and necessary. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

Patent Ambiguity Precludes Use of Parol Evidence. — When the language of the writing is patently ambiguous, parol evidence is not admissible to aid the description. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964).

Parol evidence is not admitted to explain patent ambiguities. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

Memorandum Inconsistent with Contract. — Where the memorandum of a contract partly in parol was inconsistent with the terms of the contract, it was held that the memorandum not being the contract between the parties, the plaintiff suing under the parol contract was not entitled to recover. Keith v. Bailey, 185 N.C. 262, 116 S.E. 729 (1923).

Sufficiency of Description. — This section does not render void a contract which contains a defective description merely. It only requires that the contract be in writing and signed by the party to be charged. Durham Consol. Land & Imp. Co. v. Guthrie, 116 N.C. 381, 21 S.E. 952 (1895).

The Supreme Court has uniformly recognized the principle that a deed conveying land, or a contract to sell and convey land, or a memorandum thereof, within the meaning of the statute of frauds must contain a description of the land, the subject matter thereof, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the deed, contract or memorandum refers. Kelly v. Kelly, 246 N.C. 174, 97 S.E.2d 872 (1957); Carlton v. Anderson, 276 N.C. 564, 173 S.E.2d 783 (1970); Sheppard v. Andrews, 7 N.C. App. 517, 173 S.E.2d 67 (1970); Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

If the description is sufficiently definite for the court, with the aid of extrinsic evidence, to apply the description to the exact property intended to be sold, it is enough. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964); Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

A memorandum is insufficient to meet the requirements of this section where the writing itself does not point to anything except two roads and these roads do not enclose any boundary. Carlton v. Anderson, 276 N.C. 564, 173 S.E.2d 783 (1970).

The writings must disclose, at least with sufficient definiteness to be aided by parol, the terms of the contract, the names of the parties, and a description of the property. Greenberg v. Bailey, 14 N.C. App. 34, 187 S.E.2d 505 (1972).

The designation of a tract of land by its popular name is sufficient under the statute of frauds to permit the introduction of extrinsic evidence to identify the particular tract intended. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978).

A written contract to convey the grantor's entire tract of land consisting of 146 acres was, under the circumstances of the case, held to be sufficiently certain as to the land conveyed, so as to admit parol evidence in regard to the identity of the land without violating the statute of frauds. Norton v. Smith, 179 N.C. 553, 103 S.E. 14 (1920). See Higdon v. Rice, 119 N.C. 623, 26 S.E. 256 (1896), where it is said that a defective description cannot be aided by parol testimony because that would mean to substitute by parol an essential portion of a contract required by this section to be in writing; though mistakes can be corrected and ambiguities explained by parol.

Where the calls of a deed are sufficiently definite, the locations cannot be changed by parol agreement unless contemporaneous. Haddock v. Leary, 148 N.C. 378, 62 S.E. 426 (1908).

The following memorandum found in the books of the defendant's intestate was held too vague and uncertain to take the contract out of the statute: "1841, W. P. to H. C. O. Dr. To 4 loads of Rock, one lot at one year's credit, $125." Plummer v. Owens, 45 N.C. 254 (1853).

The memorandum of a sale of standing timber must be sufficiently definite in its essential elements to comply with the requirements of the statute of frauds to enable the court to decree specific performance; but latent ambiguities may be explained by parol evidence. Camp Mfg. Co. v. Jordan, 292 F. 182 (E.D.N.C. 1923). See also Keith v. Bailey, 185 N.C. 262, 116 S.E. 729 (1923).

When all the circumstances of possession, ownership, and situation of the parties, and of their relation to each other and the property, as they were when the negotiation took place and the writing was made, are disclosed, if the meaning and application of the writing, read in the light of those circumstances, are certain and plain, the parties will be bound by it as a sufficient written contract or memorandum of their agreement. Norton v. Smith, 179 N.C. 553, 103 S.E. 14 (1920); Gilbert v. Wright, 195 N.C. 165, 141 S.E. 577 (1928).

Agreement "to buy the vacant lot," from the vendor was held not unenforceable under this section where the evidence showed that it was the only lot owned by the vendor anywhere. Gilbert v. Wright, 195 N.C. 165, 141 S.E. 577 (1928).

A memorandum "Received of C. L. $50.00 for home place where he now lives which he has no deed for" dated and signed by the owner of land is sufficiently definite to admit of parol evidence for the purpose of identifying the land, and memorandum being sufficient under statute of frauds, purchaser may introduce another receipt executed by owner, even though it does not purport to identify the land, and show by parol that it was part of the consideration for the land contracted to be conveyed. Searcy v. Logan, 226 N.C. 562, 39 S.E.2d 593 (1946).

Vague and Indefinite Description of Land Void. — If description of land is so vague and indefinite that effect cannot be given instrument without writing new, material language into it, then it is void and ineffectual. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

Writing did not sufficiently describe particular twenty-five acre portion of tract because northern boundary, described as "with the Whitehead line. Thence straight to road that goes by Plainfield Church ..." could have been drawn in infinite number of ways. Accordingly, as a matter of law, the contract was void under statute of frauds and not enforceable. Brooks v. Hackney, 100 N.C. App. 562, 397 S.E.2d 361 (1990), rev'd on other grounds, 329 N.C. 166, 404 S.E.2d 854 (1991).

Statement of Price Not Always Required. — Where the vendor is the party to be charged, the statute of frauds does not require that the price be stated in writing. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978).

In a contract for the sale of land, where the vendor is the party to be charged it is not necessary that the price be stated in writing. Northwestern Bank v. Church, 43 N.C. App. 538, 259 S.E.2d 313 (1979), cert. denied, 299 N.C. 328, 265 S.E.2d 397 (1980).

Omission from the memorandum of the manner of payment is not fatal. Where the contract fails to specify the manner and form of payment, the contract is construed to require payment to be made in cash simultaneously with tender or delivery of the deed. Hurdle v. White, 34 N.C. App. 644, 239 S.E.2d 589 (1977), cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978).

Requisites of Deeds. — A deed conveying land within the meaning of the statute of frauds must contain a description of the land, the subject matter of the deed, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the deed refers. The office of description is to furnish, and is sufficient when it does furnish, means of identifying the land intended to be conveyed. The deed itself must point to the source from which evidence aliunde to make the description complete is to be sought. Plemmons v. Cutshall, 234 N.C. 506, 67 S.E.2d 501 (1951); Powell v. Mills, 237 N.C. 582, 75 S.E.2d 759 (1953).

The vendor of lands, in substantial conformity with his parol agreement, tendered the vendee a deed to the lands, which the latter refused because the amount of the agreed purchase price had been increased, and after the vendor had sold the lands the vendee brought an action for damages. It was held that the deed tendered was a sufficient writing within the statute of frauds to bind the vendor, and the vendee could recover damages sustained by defendant's breach of contract to convey. Oxendine v. Stephenson, 195 N.C. 238, 141 S.E. 572 (1928).

A valid contract to convey land must contain expressly or by necessary implication all the essential features of an agreement to sell, one of which is a description of the land, certain in itself or capable of being rendered certain by reference to an extrinsic source designated therein. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

A contract to sell or convey land, or a memorandum thereof, within the meaning of the statute of frauds, must contain a description of the land, the subject matter of the contract, which is either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the contract refers. Watts v. Ridenhour, 27 N.C. App. 8, 217 S.E.2d 211 (1975).

To be valid, a contract to convey a part of a tract of land must definitely identify the portion to be conveyed or designate the means or source by which it can be positively identified. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

Deed Held to Be a Sufficient Writing. — A deed duly executed and acknowledged and found among the valuable papers of the grantor after his death is a sufficient writing within the meaning of the statute of frauds of a contract of grantor to convey the lands to the grantees in consideration of grantees' taking care of grantor for the remainder of his life. Austin v. McCollum, 210 N.C. 817, 188 S.E. 646 (1936).

Letters Held Sufficiently Definite and Certain. — Letters from testatrix to plaintiff held sufficiently definite and certain to constitute a memorandum of a contract to convey property to plaintiff in return for certain services. Heiland v. Lee, 207 F.2d 939 (4th Cir. 1953).

Letters from the agent for plaintiffs to defendants, and the reply of the agent for defendants, were a sufficient memorandum to meet the requirements of this section. Hines v. Tripp, 263 N.C. 470, 139 S.E.2d 545 (1965).

A contract to convey, excepting a part of the land described, is valid provided land excepted can be identified. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

A contract to convey 200 acres of a larger described tract is saved from patent ambiguity by the provision that the acreage is "to be determined by a new survey furnished by the sellers." Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

Excepted property in a contract to convey land is described with sufficient certainty if the exact location thereof is left to the election of the grantor or is capable of subsequent ascertainment otherwise. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

Grant of Easement. — No particular words are necessary to constitute a grant, and any words which clearly show the intention to give an easement, which is by law grantable, are sufficient to effect that purpose, provided the language is certain and definite in its terms. The instrument should describe with reasonable certainty the easement created and the dominant and servient tenements. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

Easement Not Void for Uncertainty of Location. — When the grant does describe with reasonable certainty the easement created and the dominant and servient tenements, but does not definitely locate it, the easement is not held void for uncertainty under the statute of frauds, but instead, the grantee is entitled to a reasonable and convenient way located in the manner and within the limits set forth in the grant. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

And an easement may be located by the practical location by the grantee, acquiesced in by the grantor. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

Conveyance of Remainder. — In a contract to convey land, once lands to be retained by the sellers are surveyed and the description of the property obtained, a conveyance, excepting the land to be retained by metes and bounds as shown by the survey, operates as a conveyance of the remainder. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976).

An agreement conditioned upon a party's obtaining financing was a valid and enforceable contract, supported by consideration. The contract included an implied promise by the party seeking financing to use reasonable effort to procure a loan and to exercise good faith in deciding whether the terms of the loan were satisfactory. Mezzanotte v. Freeland, 20 N.C. App. 11, 200 S.E.2d 410 (1973), cert. denied, 284 N.C. 616, 201 S.E.2d 689 (1974).

Parol Acceptance of Option. — A written option offering to sell, at the election of the optionee, can become binding on the owner by verbal notice to the owner, but a parol acceptance by the optionee is not sufficient to repel the statute of frauds and bind the optionee. Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964).

A written option offering to sell, at the election of the optionee, can become binding on the owner by a verbal notice to the owner. Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967), quoting Burkhead v. Farlow,

266 N.C. 595, 146 S.E.2d 802 (1966).

Where the vendor offers in writing to sell described realty at a stated price, payable in yearly installments, a verbal acceptance of the offer by the purchaser is sufficient to constitute an option enforceable by the purchaser. Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967).

A parol agreement regarding the conditional delivery of a written contract for the conveyance of land is valid; it does not contradict the written instrument, but only postpones its effectiveness until after the condition has been performed or the event has happened. Lane v. Coe, 262 N.C. 8, 136 S.E.2d 269 (1964).

A receipt for the cash payment on an identified tract of land belonging to an estate, signed by the executor, who is also an heir and authorized to act in the matter by the other heirs, is a sufficient memorandum of the contract to convey, signed by the party to be charged within the requirement of the statute of frauds. Lewis v. Allred, 249 N.C. 486, 106 S.E.2d 689 (1959).

Joint Will May Be Sufficient Memorandum of Contract to Devise. — An indivisible contract to devise real and personal property comes within the purview of the statute of frauds. But a joint will may itself be a sufficient memorandum of such contract to satisfy the statute of frauds. Mansour v. Rabil, 277 N.C. 364, 177 S.E.2d 849 (1970).

Under certain circumstances a joint will may itself be a sufficient memorandum of an agreement between the parties to the will to satisfy the statute of frauds. Hicks v. Hicks, 13 N.C. App. 347, 185 S.E.2d 430 (1971).

Will Not Sufficient as Memorandum or Note of Contract. — See McCraw v. Llewellyn, 256 N.C. 213, 123 S.E.2d 575 (1962).

The mere exercise of the statutory right to dispose of one's property at death is not of itself evidence that the disposition directed is compelled by a contractual obligation. McCraw v. Llewellyn, 256 N.C. 213, 123 S.E.2d 575 (1962); Hicks v. Hicks, 13 N.C. App. 347, 185 S.E.2d 430 (1971).

A promissory note for the purchase price, signed and given by the purchaser, is not such a contract or memorandum thereof. Burriss v. Starr, 165 N.C. 657, 81 S.E. 929 (1914).

Memorandum Sufficient to Devise Property. — Memorandum which designates the property to be devised, identifies the parties, sets forth their respective obligations as consideration for their contract, and is signed by the party to be charged therewith, was sufficient as a memorandum to devise "for the purposes of the statute of frauds." Rape v. Lyerly, 287 N.C. 601, 215 S.E.2d 737 (1975).

The memorandum need not be contained in a single document but may consist of several papers properly connected together. Smith v. Joyce, 214 N.C. 602, 200 S.E. 431 (1939); Millikan v. Simmons, 244 N.C. 195, 93 S.E.2d 59 (1956); Elliott v. Owen, 244 N.C. 684, 94 S.E.2d 833 (1956); Mezzanotte v. Freeland, 20 N.C. App. 11, 200 S.E.2d 410 (1973), cert. denied, 284 N.C. 616, 201 S.E.2d 689 (1974).

This section does not require all of the provisions of the contract to be set out in a single instrument. The memorandum required by this section is sufficient if the contract provisions can be determined from separate but related writings. Hines v. Tripp, 263 N.C. 470, 139 S.E.2d 545 (1965); Greenberg v. Bailey, 14 N.C. App. 34, 187 S.E.2d 505 (1972).

Contract when considered together with a separate sheet of "Attachment" constituted a memorandum sufficient to satisfy the statute of frauds, where the contract specifically stated that the tract being sold was "more particularly described in Attachment hereof." Mezzanotte v. Freeland, 20 N.C. App. 11, 200 S.E.2d 410 (1973), cert. denied, 284 N.C. 616, 201 S.E.2d 689 (1974).

Sufficient Memorandum of Extension Agreement. — See Hardee's Food Sys., Inc. v. Hicks, 5 N.C. App. 595, 169 S.E.2d 70 (1969).

Letters addressed to third party may be used against the writer as a memorandum of it. Such writings are sufficient evidence of the contract to warrant the court in giving effect to it. Mizell v. Burnett, 49 N.C. 249 (1857); Nicholson v. Dover, 145 N.C. 18, 58 S.E. 444 (1907).

Series of Letters Construed Together. — A series of letters, telegrams or other papers, documents, etc., signed as required by this section, will be construed together, and when the contract appears to be complete, the omission in some of the writings will be supplied by the others. Simpson v. Burnett County Lumber Co., 193 N.C. 454, 137 S.E. 311 (1927).

As to Seal. — The statute of frauds does not require a contract for the sale of land to be under the seal of the party to be charged. Simmons v. Spruill, 56 N.C. 9 (1856); Stephens v. Midyette, 161 N.C. 323, 77 S.E. 243 (1913).

A seal is not necessary to the validity of a lease regardless of the length of the term, and the common law, which did not require leases to be in writing, is in full force and effect, modified only by the requirement of this section that a lease of more than three years be in writing. Moche v. Leno, 227 N.C. 159, 41 S.E.2d 369 (1947).

Receipts for principal and interest and for taxes, in which no mention is made of any agreement by the person signing same to sell or convey land, are insufficient under the provisions of this section. Chason v. Marley, 224 N.C. 844, 32 S.E.2d 652 (1945).

The admissions of the parties in their pleadings may stand for the writing. Sandlin v. Kearney, 154 N.C. 596, 70 S.E. 942 (1911).

Mere Recital of Agreement in Pleading Is Not Waiver of Statute. — A party is not estopped by his pleading from asserting the defense of the statute of frauds unless the pleading asserts the voidable contract as a necessary basis for the relief sought, and the mere recital of the parol agreement in the pleading does not adopt it or ratify it or waive the right to thereafter assert the statute in subsequent pleadings. Davis v. Lovick, 226 N.C. 252, 37 S.E.2d 680 (1946), overruled on other grounds in Kent v. Humphries, 303 N.C. 675, 281 S.E.2d 43 (1981).

Time of Making Memorandum. — The written memorandum required by this section need not necessarily be made at the time of the agreement. Even if made thereafter, if otherwise good, it will be valid. Mizell v. Burnett, 49 N.C. 249 (1857); McGee v. Blankenship, 95 N.C. 563 (1886); Winslow v. White, 163 N.C. 29, 79 S.E. 258 (1913); McCall v. Lee, 182 N.C. 114, 108 S.E. 390 (1921); Millikan v. Simmons, 244 N.C. 195, 93 S.E.2d 59 (1956).

An agreement to extend an option to purchase land, made on the 13th of the month and reduced to writing and signed on the 15th, is enforceable between the parties as of the 13th. Millikan v. Simmons, 244 N.C. 195, 93 S.E.2d 59 (1956).

Parol Evidence of Parties' Intentions. — Where certain exhibits are found to be insufficiently related to one another by "internal reference" for consideration as a portion of a memorandum of lease under this section, they may be considered as parol evidence of the parties' intentions where the terms of the memorandum are ambiguous. Fuller v. Southland Corp., 57 N.C. App. 1, 290 S.E.2d 754, cert. denied, 306 N.C. 556, 294 S.E.2d 223 (1982).

Evidence of Preliminary Negotiations or Understanding of Parties. — The legal effect of a final instrument which defines and declares the intentions and rights of the parties cannot be modified or corrected by proof of any preliminary negotiations or agreement, nor is it permissible to show how the parties understood the transaction in order to explain or qualify what is in the final writing, in the absence of an allegation of fraud or mistake or unless the terms of the instrument itself are ambiguous and require explanation. Fuller v. Southland Corp., 57 N.C. App. 1, 290 S.E.2d 754, cert. denied, 306 N.C. 556, 294 S.E.2d 223 (1982).

B. The Signature.

What Constitutes Signing. — The signing of a paper writing or instrument is the affixing of one's name thereto with the purpose or intent to identify the paper or instrument, or to give it effect as one's act. McCall v. Textile Ind. Inst., 189 N.C. 775, 128 S.E. 349 (1925).

Although the place of the signature upon the writing of the party to be charged is immaterial, and such party need not necessarily "subscribe" the writing, yet there must be a writing in which such party must have put his name with the intention of signing it. Thus, where the plaintiff, the purchaser, gave for the purchase price a note to the defendant which was filled in by the latter payable to his own name, it was held that the note was not signed by the defendant, since filling in the note with his own name was not equivalent to signing it. Burriss v. Starr, 165 N.C. 657, 81 S.E. 929 (1914).

The signing of a paper writing or instrument is the affixing of one's name thereto, with the purpose or intent to identify the paper or instrument, or to give it effect as one's act. This is usually accomplished when a person affixes his name in his own handwriting, in such case the very act clearly evidencing the intent of the signer. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

A writing or memorandum is "signed" in accordance with the statute of frauds if it is signed by the person to be charged by any of the known modes of impressing a name on paper, namely, by writing, printing, lithographing, or other such mode, provided the same is done with the intention of signing. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

The signature to a memorandum under the statute of frauds may be written or printed and need not be subscribed at the foot of the memorandum, but must be made or adopted with the declared or apparent intent of authenticating the memorandum as that of the signer. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

Affixing one's handwritten signature is not the only method by which a paper writing may be considered as being signed within the meaning of the statute of frauds. It has been recognized that a printed name may constitute a sufficient signing under the statute of frauds, provided that it is recognized by the party sought to be charged. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

Place of Signing. — This section is satisfied when the writing contains the signature anywhere in the instrument. Flowe v. Hartwick, 167 N.C. 448, 83 S.E. 841 (1914).

This section does not require that the memorandum of sale be "subscribed," it only requires that it be signed. Hence, the signing by the auctioneer of the name of the highest bidder on the side of a printed advertisement is a sufficient signing of the contract. Devereux v. McMahon, 108 N.C. 134, 12 S.E. 902 (1891); Proctor v. Finley, 119 N.C. 536, 26 S.E. 128 (1896).

Mark Sufficient. — When written by the party to be charged, a mark of an illiterate person is a sufficient signature to fulfill the requirement of the statute. Devereux v. McMahon, 108 N.C. 134, 12 S.E. 902 (1891).

The phrase "the party to be charged" does not necessarily refer to the vendor, it may refer to the vendee. The party to be charged, within the meaning of the section is the defendant in the action, whoever he may be. Hall v. Misenheimer, 137 N.C. 183, 49 S.E. 104 (1904).

In a suit for the specific performance of a contract to convey land the "party to be charged" is the vendor, and hence the contract must have been signed by him. The vendee does not fulfill the condition imposed on him to show that the statute has been complied with, by a writing by which he alone is bound. Clegg v. Bishop, 188 N.C. 564, 125 S.E. 122 (1924).

The "party to be charged" under this section is the one against whom the relief is sought; and if the contract is sufficient to bind him, he can be proceeded against, though the others could not be held because, as to them, the statute is not fully complied with. Lewis v. Murray, 177 N.C. 17, 97 S.E. 750 (1919).

Thus, a contract in writing to sell land, signed by the vendor is good against him, although the correlative obligation to pay the price is not in writing and cannot be enforced against the purchaser. Mizell v. Burnett, 49 N.C. 249 (1857).

The statute requires that the writing be signed by the party to be charged. So, if A contract in writing to sell land to B, the former's promise being in writing and signed, but the latter's not, A would be bound to perform, but B would not. Mizell v. Burnett, 49 N.C. 249 (1857); Durham Consol. Land & Imp. Co. v. Guthrie, 116 N.C. 381, 21 S.E. 952 (1895).

Member of Corporation or Partner May Sign. — Under the clause "or by some other person by him thereto lawfully authorized" a member of a corporation or a partner is a competent agent to sign for the corporation or partnership. Neaves v. North State Mining Co., 90 N.C. 412 (1884).

Signature of Agent. — If signed by one who is proved or admitted by the principal to have been authorized as agent, it is a sufficient compliance with the statute if the agent signs his own name instead of that of his principal by him. Hargrove v. Adcock, 111 N.C. 166, 16 S.E. 16 (1892); Rose v. Vulcan Materials Co., 282 N.C. 643, 194 S.E.2d 521 (1973).

The name of the party to be charged may be signed by some other person under the express terms of this section. In re Williams' Will, 234 N.C. 228, 66 S.E.2d 902 (1951).

This section permits an agent to bind his principal, and the agent may do so by signing his name. Hines v. Tripp, 263 N.C. 470, 139 S.E.2d 545 (1965).

Where the agent is the one by whom the contract or the memorandum is signed, the authority of the agent to sign it for his principal need not have been given in writing. And even a subsequent ratification of an unauthorized signing will suffice. Johnston v. Sikes, 49 N.C. 70 (1856).

It is not necessary that the name of the principal or his relation to the transaction shall appear upon the writing itself or in the form of the signature. Neaves v. North State Mining Co., 90 N.C. 412 (1884).

The writing required by the statute of frauds may be signed by an agent, and the agent's authority to do so need not be in writing. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

The owner of real estate may sell such property through an agent, and when so acting the owner is not required to sign the agreement or to communicate with the purchaser. Reichler v. Tillman, 21 N.C. App. 38, 203 S.E.2d 68 (1974).

The agent may sign the contract to sell and convey in his own name or in the name of his principal or principals. Reichler v. Tillman, 21 N.C. App. 38, 203 S.E.2d 68 (1974).

The authority of a duly authorized agent to contract to convey lands need not be in writing under the statute of frauds. Reichler v. Tillman, 21 N.C. App. 38, 203 S.E.2d 68 (1974).

The authority of an agent to sell the lands of another may be shown aliunde or by parol. Reichler v. Tillman, 21 N.C. App. 38, 203 S.E.2d 68 (1974).

The owner of land may sell his land through an agent and the agent may sign a contract to sell and convey in his own name or in the name of his principal(s). Hayman v. Ross, 22 N.C. App. 624, 207 S.E.2d 348 (1974).

When Broker May Sign for Both Parties. — Ordinarily, a broker does not act in a dual capacity as the representative of both sides to a negotiation, but only as the agent of the party who first employed him. Once a deal is concluded, however, the law permits him to act as the representative of both parties if they assent thereto, for the purpose of signing a memorandum sufficient to take the transaction out of the statute of frauds. Hayman v. Ross, 22 N.C. App. 624, 207 S.E.2d 348 (1974).

A subsequent ratification of an unauthorized signing will make it valid within this section. Rose v. Vulcan Materials Co., 282 N.C. 643, 194 S.E.2d 521 (1973).

Telegrams. — A telegram to which the vendor's name has been affixed in print may be considered as having been signed by the vendor within the meaning of the statute of frauds. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

Ordinance, Resolution or Vote. — An ordinance, resolution or vote of a municipal corporation, accepting a lease or contract tendered, does not constitute a signing within the meaning of the statute. Wade v. New Bern, 77 N.C. 460 (1877).

C. Statement of Consideration.

Contract Must Fix the Price. — A contract for the sale of land or any interest therein, must fix the price, and where it does not, plaintiff cannot establish by parol evidence a change as to one of the essential terms of the contract as this would open the door to "all the mischiefs which the statute was intended to prevent." Harvey v. Linker, 226 N.C. 711, 40 S.E.2d 202 (1946); Shepherd v. Duke Power Co., 140 F. Supp. 27 (M.D.N.C. 1956).

Whether oral or in writing, the contract must have a consideration to support it. Draughan v. Bunting, 31 N.C. 10 (1848); Stanly v. Hendricks, 35 N.C. 86 (1851); Combs v. Harshaw, 63 N.C. 198 (1869); Haun v. Burrell, 119 N.C. 544, 26 S.E. 111 (1896). But if in writing, the consideration need not appear in the writing, and may be shown by parol Nichols v. Bell, 46 N.C. 32 (1853); Virginia Trust Co. v. Lambeth Realty Corp., 215 N.C. 526, 2 S.E.2d 544 (1939); North Carolina Mtg. Corp. v. Wilson, 205 N.C. 493, 171 S.E. 783 (1933); Commercial Credit Corp. v. Robeson Motors, Inc., 243 N.C. 326, 90 S.E.2d 886 (1956). But see Commercial Fin. Co. v. Holder, 235 N.C. 96, 68 S.E.2d 794 (1952), where it is said that a memorandum of a contract for the sale of land is not good as against the vendee unless it shows the price to be paid.

Change of Purchase Price in Option. — Where purchase price of land was changed in an option it constituted a new contract, unenforceable unless signed by the parties to be charged. Harvey v. Linker, 226 N.C. 711, 40 S.E.2d 202 (1946).

IV. PART PERFORMANCE.

In General. — The doctrine which prevails in many states, that a part or even a full performance of the stipulation of an unwritten agreement for the disposition of an interest in land exempts such agreement from the operation of the statute of frauds, is not recognized in this State under this section which declares such agreements to be void and of no effect. Ellis v. Ellis, 16 N.C. 341 (1829); Kivett v. McKeithan, 90 N.C. 106 (1884); Ebert v. Disher, 216 N.C. 36, 3 S.E.2d 301, petition for rehearing allowed in part and dismissed in part, 216 N.C. 546, 5 S.E.2d 716 (1939). In such a case, however, the party who has advanced the purchase price or has made improvements shall be refunded his advances. Kivett v. McKeithan, supra; 278 N.C. 701, 181 S.E.2d 602 (1971); Northwestern Bank v. Barber, 79 N.C. App. 425, 339 S.E.2d 452; 316 N.C. 733, 345 S.E.2d 391 (1986). See also, Smith v. Finance Co. of Am., 207 N.C. 367, 177 S.E. 183 (1934); Cuthberton v. Peoples Bank, 170 N.C. 531, 87 S.E. 333 (1915), where cases were held not within statute.

North Carolina has repudiated and consistently declined to follow the doctrine of part performance. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962).

The remedy of the promisee who has rendered personal services in consideration of an oral contract to devise real estate void under the statute of frauds is an action on implied assumpsit or quantum meruit for the value of the services rendered. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962).

Where the promisor in an oral contract to convey or devise real property has received the purchase price in money or other valuable consideration and has failed to transfer title, the promisee may recover the consideration in an action of quasi-contract for money had and received or under the doctrine of unjust enrichment. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962).

Permanent improvements made by the purchaser in possession under an unenforceable contract to convey are sufficient claim of title to support a claim for betterments, and the statute of frauds may not be asserted to defeat such claim. Pamlico County v. Davis, 249 N.C. 648, 107 S.E.2d 306 (1959).

V. PLEADING AND PRACTICE.

Unless the party to be charged takes advantage of the statute of frauds by pleading it, or by denial of the contract, as alleged, which is equivalent to a plea of the statute, a parol contract to sell or convey land may be enforced. Weant v. McCanless, 235 N.C. 384, 70 S.E.2d 196 (1952); Laing v. Lewis, 133 N.C. App. 172, 515 S.E.2d 40 (1999).

Three Modes of Taking Advantage of Statute. — The party to be charged may take advantage of the statute by pleading the statute specifically, by denying the contract, or by alleging another and different contract. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962).

The contract, as alleged, may be denied and the statute pleaded, and in such case if it develops on the trial that the contract is in parol, it must be declared invalid. Simmons v. Morton, 1 N.C. App. 308, 161 S.E.2d 222 (1968).

Defense Can Only Be Raised by Answer or Reply. — The provisions of the statute of frauds cannot be taken advantage of by motion to strike. Such defense can only be raised by answer or reply. The statute of frauds may be taken advantage of in any one of three ways: (1) The contract may be admitted and the statute pleaded as a bar to its enforcement; (2) the contract, as alleged, may be denied and the statute pleaded, and in such case if it "develops on the trial that the contract is in parol, it must be declared invalid;" or, (3) the party to be charged may enter a general denial without pleading the statute, and on the trial object to the admission of parol testimony to prove the contract. Weant v. McCanless, 235 N.C. 384, 70 S.E.2d 196 (1952).

The statute of frauds is an affirmative defense and must be pleaded. Yeager v. Dobbins, 252 N.C. 824, 114 S.E.2d 820 (1960).

An oral contract to convey or devise real property may be enforced unless the party to be charged takes advantage of the statute of frauds by pleading it. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962).

When a tenant enters into possession under an invalid lease and tenders rent which is accepted by the landlord, a periodic tenancy is created, the period being determined by the interval between rent payments. Kent v. Humphries, 303 N.C. 675, 281 S.E.2d 43 (1981), overruling line of cases represented by Mauney v. Norvell, 179 N.C. 628, 103 S.E. 372 (1920); Barbee v. Lamb, 225 N.C. 211, 34 S.E.2d 65 (1945), and Davis v. Lovick, 226 N.C. 252, 37 S.E.2d 680 (1946), to the extent that they are inconsistent.

Statute May Be Relied on Under General Issue or General Denial. — A party may rely on the statute of frauds under the general issue or a general denial. Luton v. Badham, 127 N.C. 96, 37 S.E. 143 (1900); Winders v. Hill, 144 N.C. 614, 57 S.E. 456 (1907); Ebert v. Disher, 216 N.C. 36, 3 S.E.2d 301 (1939).

It is settled law that a party may rely on the statute of frauds under a general denial. Clapp v. Clapp, 241 N.C. 281, 85 S.E.2d 153 (1954); Riggs v. Anderson, 260 N.C. 221, 132 S.E.2d 312 (1963).

Denial that an alleged oral agreement to devise real property was ever made invokes the statute of frauds as effectively as if it had been expressly pleaded. Humphrey v. Faison, 247 N.C. 127, 100 S.E.2d 524 (1957); Hunt v. Hunt, 261 N.C. 437, 135 S.E.2d 195 (1964).

A denial of the alleged contract suffices to require compliance with this section if plaintiff is to recover on the contract alleged. McCraw v. Llewellyn, 256 N.C. 213, 123 S.E.2d 575 (1962).

A defense of the statute of frauds may be taken advantage of by general denial. Riggs v. Anderson, 260 N.C. 221, 132 S.E.2d 312 (1963).

A denial of the contract as alleged is equivalent to a plea of the statute. McCall v. Textile Ind. Inst., 189 N.C. 775, 128 S.E. 349 (1925); Ebert v. Disher, 216 N.C. 36, 3 S.E.2d 301, petition for rehearing allowed in part and dismissed in part, 216 N.C. 546, 5 S.E.2d 716 (1939); Wilson v. Lineberger, 88 N.C. 416 (1883); 90 N.C. 180 (1884); Ford v. Vandyke, 33 N.C. 227 (1850).

In a suit to enforce specific performance of an oral contract to convey land, the denial of the contract in the answer raises the defense of the statute of frauds. Grady v. Faison, 224 N.C. 567, 31 S.E.2d 760 (1944).

In an action on a contract to convey land, the defense being that the contract is not in writing as required by this section, the parties sought to be charged may simply deny the contract or plead the statute of frauds, or they may do both, and if either plea is made good, the contract cannot be enforced. Chason v. Marley, 224 N.C. 844, 32 S.E.2d 652 (1945).

Denial of the contract as alleged is sufficient to raise the defense of the statute of frauds, since it places the burden upon plaintiff of establishing the contract by competent evidence, and if the contract be within the statute, the writing itself is the only competent evidence to prove its existence. Jamerson v. Logan, 228 N.C. 540, 46 S.E.2d 561 (1948); Shepherd v. Duke Power Co., 140 F. Supp. 27 (M.D.N.C. 1956).

But see Curtis v. Piedmont Lumber & Mining Co., 109 N.C. 401, 13 S.E. 944 (1891), where it is held that in an action on a contract for lumber the defendant in order to avail himself of the defense of the statute of frauds should plead it specifically.

Defendant's general denial of the alleged contract invoked the statute of frauds as effectively as if it had been expressly pleaded and thereby imposed upon plaintiff the burden of showing a written contract sufficient to comply with its requirements. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

The statute of frauds cannot be taken advantage of by demurrer, since that admits the contract. The contract is valid and binding unless the invalidity, by reason of the statute, is set up by the answer. Hemmings v. Doss, 125 N.C. 400, 34 S.E. 511 (1899); Stevens v. Midyette, 161 N.C. 323, 77 S.E. 243 (1913); Weant v. McCanless, 235 N.C. 384, 70 S.E.2d 196 (1952).

The provisions of this section may not be taken advantage of by demurrer. McCampbell v. Valdese Bldg. & Loan Ass'n, 231 N.C. 647, 58 S.E.2d 617 (1950); Yeager v. Dobbins, 252 N.C. 824, 114 S.E.2d 820 (1960).

A party who claims protection from the statute must take affirmative action. He cannot avail himself of its provisions by demurrer. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

The defense of the statute of frauds to an oral agreement to secure a note by a mortgage on real estate cannot be raised by demurrer. McKinley v. Hinnant, 242 N.C. 245, 87 S.E.2d 568 (1955).

Procedurally, the defense of the statute of frauds cannot be taken advantage of by demurrer; it can only be raised by answer. This may be done in either of two ways: The defendant may plead the statute, in which case when it develops on the trial that the contract is in parol, it must be declared invalid; or the defendant may enter a general denial, and on trial may object to the parol evidence to establish the contract, which will be equally fatal to the maintenance of the action. Embler v. Embler, 224 N.C. 811, 32 S.E.2d 619 (1945).

Proving Contract Required to Be in Writing. — A contract which the law requires to be in writing can be proved only by the writing itself, not as the best but as the only admissible evidence of its existence. Severe v. Penny, 48 N.C. App. 730, 269 S.E.2d 760 (1980).

Where a plaintiff claimed breach of a contract to convey certain real property, the defendant was entitled to summary judgment because the plaintiff produced no writing reflecting any such contract. Anderson v. Brokers Inc. (In re Brokers, Inc.), 363 B.R. 458, 2007 Bankr. LEXIS 792 (Bankr. M.D.N.C. 2007).

When Statute Is Pleaded, Parol Evidence Is Incompetent. — When the statute of frauds is specifically pleaded, testimony of a contract or promise to lease land exceeding in duration three years from making thereof, resting entirely in parol, is incompetent. Wright v. Allred, 226 N.C. 113, 37 S.E.2d 107 (1946).

Parol evidence is incompetent to establish an entire contract to convey land, and summary judgment was properly entered for defendants in an action for specific performance of an alleged contract to convey land where plaintiffs were unable to produce a written contract or any written memorandum of a contract to convey signed by the parties to be charged. Severe v. Penny, 48 N.C. App. 730, 269 S.E.2d 760 (1980).

Parol Evidence Competent When Description Latently Ambiguous. — Where a description is latently ambiguous plaintiff may offer evidence, parol and other, with reference to extrinsic matter tending to identify the property, and defendant may offer such evidence with reference thereto tending to show impossibility of identification, i.e., ambiguity. Prentice v. Roberts, 32 N.C. App. 379, 232 S.E.2d 286, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

But parol evidence cannot vary unambiguous terms of a written contract to convey real property. McCay v. Morris, 46 N.C. App. 791, 266 S.E.2d 5 (1980).

Testimony tending to show an oral agreement in direct conflict with the deed is incompetent. Rourk v. Brunswick County, 46 N.C. App. 795, 266 S.E.2d 401 (1980).

Use of Extrinsic Evidence to Show Connection Between Documents. — Although, generally, extrinsic evidence is not allowed in this State to show the connection between two documents, once the connection is shown to exist, extrinsic evidence is admissible to explain or refute identification of the land therein described. House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

Where contract explicitly referred to land survey, reliance upon extrinsic evidence to show connection was unnecessary. House v. Stokes, 66 N.C. App. 636, 311 S.E.2d 671, cert. denied, 311 N.C. 755, 321 S.E.2d 133 (1984).

Defendant's failure to object to parol evidence offered to show the existence of the contract is not a waiver of his defense of the statute of frauds, a fortiori if the evidence admitted without objection does not tend to show the existence of the contract but tends only to support a recovery on implied assumpsit, since the denial of the contract casts the burden on plaintiff to establish his cause of action by legal evidence. Jamerson v. Logan, 228 N.C. 540, 46 S.E.2d 561 (1948).

Where the pleadings raise the question of the statute of frauds, that defense is not waived by a failure to object to the parol evidence on the trial. Pickelsimer v. Pickelsimer, 257 N.C. 696, 127 S.E.2d 557 (1962); Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967).

Defendant's failure to object to testimony as to an oral contract does not waive the defense of the statute. Yaggy v. B.V.D. Co., 7 N.C. App. 590, 173 S.E.2d 496 (1970).

Burden of Showing Proper Memorandum. — In a suit to enforce specific performance of a written memorandum allegedly given for the sale of a house and lot, the burden was on the plaintiff to show that the memorandum was executed in compliance with the statute of frauds. Elliott v. Owen, 244 N.C. 684, 94 S.E.2d 833 (1956).

Evidence to Show Husband's Authority to Act as Wife's Agent. — Where plaintiffs alleged and defendants denied that plaintiff entered into a binding contract with both defendants, plaintiffs were free to offer such evidence as they might have to show that the husband-defendant was authorized by his wife to act as her agent to contract to sell the lands belonging to both as tenants by the entirety. There was no necessity that plaintiffs allege that the contract was executed by the feme defendant through an agent. Reichler v. Tillman, 21 N.C. App. 38, 203 S.E.2d 68 (1974).

Variance from Terms of Writing. — Where plaintiff's attempted proof constituted an essential variance and departure from the terms of the written memorandum, he was not entitled to specific performance or damages in the face of defendant's plea of the statute of frauds. Carr v. Good Shepherd Home, Inc., 269 N.C. 241, 152 S.E.2d 85 (1967).

Record on Appeal. — Where upon appeal, the insufficiency of letters to constitute a valid contract under this section is sought to be raised, the contents of the letters must appear upon the record. Layton v. Godwin, 186 N.C. 312, 119 S.E. 495 (1923).

Issues as to title of land cannot be shown by parol. Cox v. Ward, 107 N.C. 507, 12 S.E. 379 (1890); Presnell v. Garrison, 122 N.C. 595, 29 S.E. 839 (1898).

Discharge by Matter in Pais. — A written contract for the sale of land can be discharged by matter in pais. Miller v. Pierce, 104 N.C. 389, 10 S.E. 554 (1889).

Doctrine of Equitable Estoppel. — When faced with oral agreements involving real property interests, courts limit the application of the equitable estoppel doctrine to situations where the party seeking to invoke the statute of frauds, G.S. 22-2, has engaged in plain, clear and deliberate fraud. B & F Slosman v. Sonopress, Inc., 148 N.C. App. 81, 557 S.E.2d 176, 2001 N.C. App. LEXIS 1274 (2001), cert. denied, 355 N.C. 283, 560 S.E.2d 795 (2002).

Where Complaint Alleges Consummated Agreement or Estoppel. — Where, in lessor's action for possession of the premises, the allegations of the complaint are sufficient, liberally construed, to allege a consummated parol agreement by lessee to surrender the premises or equitable matters in pais sufficient to raise the question of estoppel of lessee and those claiming under him from denying the termination of the lease, lessor is entitled to show facts establishing such allegations, and judgment dismissing the action on the ground that the parol agreement to surrender the lease came within the statute of frauds and was void as a matter of law is error. Herring v. Volume Merchandise, Inc., 249 N.C. 221, 106 S.E.2d 197 (1958).

§ 22-3: Repealed by Session Laws 1995, c. 379, s. 15.

§ 22-4. Promise to revive debt of bankrupt.

No promise to pay a debt discharged by any decree of a court of competent jurisdiction, in any proceeding in bankruptcy, shall be received in evidence unless such promise is in writing and signed by the party to be charged therewith. (1899, c. 57; Rev., s. 978; C.S., s. 990.)

Legal Periodicals. — For possible construction of this section, see 13 N.C.L. Rev. 60 (1935).

CASE NOTES

Whether this section is applicable to a promise made subsequent to the filing of a petition in bankruptcy but before the order of discharge is entered, quaere. Westall v. Jackson, 218 N.C. 209, 10 S.E.2d 674 (1940).

Cited in Varnell v. Henry M. Milgrom, Inc., 78 N.C. App. 451, 337 S.E.2d 616 (1985).

§ 22-5. Commercial loan commitments.

No commercial loan commitment by a bank, savings and loan association, or credit union for a loan in excess of fifty thousand dollars ($50,000) shall be binding unless the commitment is in writing and signed by the party to be bound. As used in this section, the term "commercial loan commitment" means an offer, agreement, commitment, or contract to extend credit primarily for business or commercial purposes and does not include charge or credit card accounts, personal lines of credit, overdrafts, or any other consumer account. Offers, agreements, commitments, or contracts to extend credit primarily for aquaculture, agricultural, or farming purposes are specifically exempted from the provisions of this section. (1989, c. 678.)

Legal Periodicals. — For article, "The Regulation of Contractual Change: A Guide to No Oral Modification Clauses for North Carolina Lawyers," see 81 N.C.L. Rev. 2239 (2003).

Chapter 22A.

Signatures.

Sec.
22A-1. Use of a signature facsimile by a person with a disability.

§ 22A-1. Use of a signature facsimile by a person with a disability.

A person with a disability, as defined in G.S. 168A-3(7a), may use a registered signature facsimile as a proper mark of the person's legal signature. An example of the signature facsimile shall be registered by the person with a disability with the clerk of the superior court in the county where the person lives. The registered signature facsimile may be revoked at any time in writing by the person with a disability. (1973, c. 878; 1997-208, s. 1; 2009-570, s. 34.)

Effect of Amendments. — Session Laws 2009-570, s. 34, effective August 28, 2009, substituted "person with a disability" for "handicapped person" in the section heading and throughout the section; and substituted "G.S. 168A-3(7a)" for "G.S. 168A-3(4)" in the first sentence.

Chapter 22B.

Contracts Against Public Policy.

Article 1.

Invalid Agreements.

Sec.
22B-1. Construction indemnity agreements invalid.
22B-2. Contracts to improve real property.
22B-3. Contracts with forum selection provisions.
22B-4 through 22B-9. [Reserved.]

Article 2.

Jury Trial Waivers Unenforceable.

22B-10. Contract provisions waiving jury trial unenforceable.

Sec.
22B-11 through 22B-19. [Reserved.]

Article 3.

Deed Restrictions, Covenants, and Other Agreements Prohibiting Solar Collectors.

22B-20. Deed restrictions and other agreements prohibiting solar collectors.

ARTICLE 1.

Invalid Agreements.

§ 22B-1. Construction indemnity agreements invalid.

Any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the promisee, its independent contractors, agents, employees, or indemnitees, is against public policy and is void and unenforceable. Nothing contained in this section shall prevent or prohibit a contract, promise or agreement whereby a promisor shall indemnify or hold harmless any promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the sole negligence of the promisor, its agents or employees. This section shall not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer, nor shall this section apply to promises or agreements under which a public utility as defined in G.S. 62-3(23) including a railroad corporation as an indemnitee. This section shall not apply to contracts entered into by the Department of Transportation pursuant to G.S. 136-28.1. (1979, c. 597, s. 1; 1991, c. 636, s. 3; 1993, c. 553, s. 12.)

Editor's Note. — The reference to G.S. 62-3(23) should now be to G.S. 62-3(23)a.

Session Laws 1993, c. 436, s. 1, amended the title of this Article effective October 1, 1993, and applicable to any contract entered into on or after that date.

CASE NOTES

Legislature intended, by exempting insurance contracts or other agreements issued by an insurer, to prevent insurance policies which name the buyer of construction services as an insured from being invalidated. Miller Brewing Co. v. Morgan Mechanical Contractors, 90 N.C. App. 310, 368 S.E.2d 438, cert. denied, 323 N.C. 174, 373 S.E.2d 110 (1988).

Terms "insurance contract ... or any other agreement issued by an insurer" in this section refer to contracts of insurance and insurers as defined, authorized, and regulated by Chapter 58. Miller Brewing Co. v. Morgan Mechanical Contractors, 90 N.C. App. 310, 368 S.E.2d 438, cert. denied, 323 N.C. 174, 373 S.E.2d 110 (1988).

"Indemnity and Hold Harmless" Provision Held Void. — "Indemnity and hold harmless" provision printed on the back of a purchase order did not fall within the exception for contracts of insurance found in Chapter 58, and thus, the provision was void under this section. Miller Brewing Co. v. Morgan Mechanical Contractors, 90 N.C. App. 310, 368 S.E.2d 438, cert. denied, 323 N.C. 174, 373 S.E.2d 110 (1988).

Agreement Did Not Violate This Section. — Language in indemnity agreement that did not explicitly provide that plaintiff would be insulated from its own negligence, but provided only that defendant would hold plaintiff harmless for all damages resulting from defendant's operation of a gas system, was not prohibited by this section. City of Wilmington v. North Carolina Natural Gas Corp., 117 N.C. App. 244, 450 S.E.2d 573 (1994).

Construction indemnity provisions that the plaintiff plant owner had in its contracts with defendant maintenance company and security company were valid pursuant to G.S. 22B-1 as such provisions sought to allow plaintiff to be indemnified by defendants due to defendants' negligence and not because of plaintiff's own negligence. Bridgestone/Firestone, Inc. v. Ogden Plant Maintenance Co., 144 N.C. App. 503, 548 S.E.2d 807, 2001 N.C. App. LEXIS 530 (2001), aff'd, 355 N.C. 274, 559 S.E.2d 786 (2002).

Applicability to Franchise Agreement. — This section applied to a franchise agreement whereby defendant could construct, operate and maintain a gas system in the city granting the franchise. City of Wilmington v. North Carolina Natural Gas Corp., 117 N.C. App. 244, 450 S.E.2d 573 (1994).

Where an agreement involved both the construction of a new appliance and the alteration of an existing appliance within the meaning of this section, any promise on the part of defendant to indemnify or hold plaintiff harmless made in or in connection with the agreement to perform was invalid unless the agreement fell under an exception stated in this section. Miller Brewing Co. v. Morgan Mechanical Contractors, 90 N.C. App. 310, 368 S.E.2d 438, cert. denied, 323 N.C. 174, 373 S.E.2d 110 (1988).

Illegal Provision Held Severable. — Although clause in contract violated provisions of this section, the illegal provision was severable from an otherwise valid indemnity provision. International Paper Co. v. Corporex Constructors, Inc., 96 N.C. App. 312, 385 S.E.2d 553 (1989).

Even assuming an indemnification clause violated G.S. 22B-1 because a portion of it served to indemnify a contractor against its own negligence, the problem could be solved by simply removing the offending phrase; the indemnification clause, on its face, was self-limiting as indemnification was restricted to damages: (1) that arose or resulted from performance of a subcontractor's work; and (2) that were "permitted by law." Vecellio & Grogan, Inc. v. Piedmont Drilling & Blasting, Inc., 183 N.C. App. 66, 644 S.E.2d 16, 2007 N.C. App. LEXIS 837 (2007).

Illegal Provision Held Not Severable. — Trial court correctly granted the subcontractor's motion for judgment on the pleadings because the indemnification provisions in its construction contract with the supplier violated G.S. 22B-1 and were not severable; therefore, the entire contract was void and there could be no breach of contract. Jackson v. Associated Scaffolders & Equip. Co., 152 N.C. App. 687, 568 S.E.2d 666, 2002 N.C. App. LEXIS 961 (2002).

Applied in Blaylock Grading Co., LLP v. Smith, 189 N.C. App. 508, 658 S.E.2d 680, 2008 N.C. App. LEXIS 653 (2008).

Cited in St. Paul Fire & Marine Ins. Co. v. Hanover Ins. Co., 187 F. Supp. 2d 584, 2000 U.S. Dist. LEXIS 2783 (E.D.N.C. 2000); Pa. Nat'l Mut. Cas. Ins. Co. v. Associated Scaffolders & Equip. Co., 157 N.C. App. 555, 579 S.E.2d 404, 2003 N.C. App. LEXIS 749 (2003).

§ 22B-2. Contracts to improve real property.

A provision in any contract, subcontract, or purchase order for the improvement of real property in this State, or the providing of materials therefor, is void and against public policy if it makes the contract, subcontract, or purchase order subject to the laws of another state, or provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process is located in another state. (1993, c. 294, s. 2.)

Cross References. — For provisions concerning limitations on the power of parties to consumer leases to choose applicable law and judicial forum, see G.S. 25-2A-106.

CASE NOTES

Choice of Law and Forum Selection Clauses Invalid. — Superior court erred in dismissing a subcontractor's breach of contract claim for improper venue since the contract pertained to the improvement of real property located in North Carolina and was for labor and materials, and thus, the contract's choice of law and forum selection clauses were invalid under G.S. 22B-2. Price & Price Mech. of N.C., Inc. v. Miken Corp., 191 N.C. App. 177, 661 S.E.2d 775, 2008 N.C. App. LEXIS 1130 (2008).

§ 22B-3. Contracts with forum selection provisions.

Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. This prohibition shall not apply to non-consumer loan transactions or to any action or arbitration of a dispute that is commenced in another state pursuant to a forum selection provision with the consent of all parties to the contract at the time that the dispute arises. (1993, c. 436, s. 2; 1995, c. 100, s. 1.)

Cross References. — For provisions concerning limitations on the power of parties to consumer leases to choose applicable law and judicial forum, see G.S. 25-2A-106.

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 436, s. 2 having been G.S. 22B-10.

Legal Periodicals. — For note, "Civil Procedure — Forum Selection — N.C. Gen. Stat. G.S. 22B-3 (1994)," see 72 N.C.L. Rev. 1608 (1994).

For note and comment, "FAA and Arbitration Clauses—How Far Can It Reach? The Effect of Allied-Bruce Terminix, Inc. v. Dobson," see 19 Campbell L. Rev. 607 (1997).

CASE NOTES

Non-consumer Loan Defined. — Under this section a "non-consumer" loan is one that is not extended to a natural person and not used for family, household, personal, or agricultural purposes. L.C. Williams Oil Co. v. NAFCO Capital Corp., 130 N.C. App. 286, 502 S.E.2d 415 (1998).

Contracts "Entered Into." — A contract which was negotiated in North Carolina for several weeks, but which was ultimately signed by defendants in their Connecticut office was properly considered to have been "entered into" outside the state and did not contravene the public policy enunciated in this section. Key Motorsports, Inc. v. Speedvision Network, 40 F. Supp. 2d 344 (M.D.N.C. 1999).

Federal district court held that a forum selection clause was not contrary to North Carolina public policy as set forth in G.S. 22B-3 because that section applied only to contracts entered into in North Carolina and the contract at issue was entered into in Massachusetts. Price v. Leasecomm Corp., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 5467 (M.D.N.C. Mar. 31, 2004).

Since a franchise agreement between North Carolina franchisees and a Florida franchiser was not finalized until it was signed by the franchiser in its Florida offices, that signing was the last act done by either of the parties that was essential to a meeting of minds meaning that the contract legally was entered into in Florida; consequently, G.S. 22B-3 did not apply to the franchise agreement and a forum selection clause mandating arbitration in Florida was enforceable. Szymczyk v. Signs Now Corp., 168 N.C. App. 182, 606 S.E.2d 728, 2005 N.C. App. LEXIS 162 (2005).

General contractor's claim that letters evidencing alleged debt that the general contractor owed to the judgment creditor should have been excluded from the trial court's consideration as unenforceable under G.S. 22B-3 could not be considered on appeal; the state of the record, without any findings of fact or conclusions of law by the trial court, was such that the argument was not supported by evidence in the record. Quantum Corp. Funding, Ltd. v. B.H. Bryan Bldg. Co., 175 N.C. App. 483, 623 S.E.2d 793, 2006 N.C. App. LEXIS 187 (2006).

One Party in Dire Straits. — Enforcement of a forum selection clause in agreement to procure and sell aircraft was unreasonable because the individual was in desperate financial condition and the owner of the aviation company insisted both on the agreement and ultimate control over the venture. Dove Air, Inc. v. Bennett, 226 F. Supp. 2d 771, 2002 U.S. Dist.

LEXIS 18529 (W.D.N.C. 2002).

Preemption by Federal Law. — Trial court committed error by not dismissing a civil action as to one defendant that had executed an agreement with plaintiff that included an arbitration and forum selection clause requiring out-of-state arbitration; since the agreement involved interstate commerce, the Federal Arbitration Act preempted the North Carolina Uniform Arbitration Act's provision that voided any provision, regarding contracts entered into in North Carolina, that required prosecution or arbitration of any dispute arising from the contract to be instituted or heard in another state. Boynton v. ESC Med. Sys., 152 N.C. App. 103, 566 S.E.2d 730, 2002 N.C. App. LEXIS 873 (2002).

Forum selection clause in an agreement that was the subject of a district court action was not voided by G.S. 22B-3 because forum and venue issues were governed by federal law. Rice v. Bellsouth Adver. & Publ'g Corp., 240 F. Supp. 2d 526, 2002 U.S. Dist. LEXIS 24230 (W.D.N.C. 2002).

Contacts were sufficient to establish that the parties' franchise agreement was interstate commerce where Florida franchiser provided support to North Carolina franchisees in the form of manuals, training, advice via telephone, and the use of a specific name and trademark, and where the franchisees routinely transmitted payments from North Carolina to Florida and attended the franchiser's annual convention in Florida; therefore, the Federal Arbitration Act preempted G.S. 22B-3 and allowed enforcement of a forum selection clause that mandated arbitration in Florida. Szymczyk v. Signs Now Corp., 168 N.C. App. 182, 606 S.E.2d 728, 2005 N.C. App. LEXIS 162 (2005).

Although North Carolina statutory law and public policy appeared to bar the arbitration clause contained in the contract executed by the seller and buyer because the clause selected the out-of-state site of Fargo, North Dakota, as the place that arbitration was to take place, the Federal Arbitration Act, 9 U.S.C.S. § 1 et seq., applied, permitted the parties' arbitration, and preempted North Carolina provisions to the contrary. Goldstein v. Am. Steel Span, Inc., 181 N.C. App. 534, 640 S.E.2d 740, 2007 N.C. App. LEXIS 248 (2007).

Forum Selection Clause Held Reasonable. — Forum selection clause in defendant's lease was upheld where (1) there was no fraud involved in including the forum selection clause, (2) plaintiff's travel to the selected forum, Massachusetts, may have been inconvenient, but not extraordinarily so, (3) Massachusetts law would have applied, even if the matter were not transferred, based on North Carolina's choice of law rules, and (4) the clause did not violate public policy; accordingly, the district court granted the motion to transfer. Price v. Leasecomm Corp., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 5467 (M.D.N.C. Mar. 31, 2004).

Forum Selection Clause Held Unreasonable and Unjust. — Defendants' motion to transfer venue to Texas was denied because application of the forum-selection clause would have been unreasonable and unjust; the case involved a contract between North Carolina corporations for the sale of an ongoing business in North Carolina, the contract was entered into in North Carolina and had been performed in North Carolina, almost all of the witnesses were located in North Carolina, and the state of North Carolina had expressed a strong interest in having local controversies settled at home. Curtis B. Pearson Music Co. v. McFadyen Music, Inc., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 11196 (M.D.N.C. June 3, 2005).

Cited in Republic Mtg. Ins. Co. v. Brightware, Inc., 35 F. Supp. 2d 482 (M.D.N.C. 1999); Rice v. BellSouth Adver. & Publ. Corp., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 13129 (W.D.N.C. July 18, 2002); Hickox v. R&G Group Int'l, 161 N.C. App. 510, 588 S.E.2d 566, 2003 N.C. App. LEXIS 2184 (2003); James C. Greene Co. v. Great Am. E&S Ins. Co., 321 F. Supp. 2d 717, 2004 U.S. Dist. LEXIS 11008 (E.D.N.C. 2004); Simpson v. Snyder's of Hanover, Inc., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 42091 (W.D.N.C. June 12, 2006); Price & Price Mech. of N.C., Inc. v. Miken Corp., 191 N.C. App. 177, 661 S.E.2d 775, 2008 N.C. App. LEXIS 1130 (2008).

§§ 22B-4 through 22B-9: Reserved for future codification purposes.

ARTICLE 2.

Jury Trial Waivers Unenforceable.

§ 22B-10. Contract provisions waiving jury trial unenforceable.

Any provision in a contract requiring a party to the contract to waive his right to a jury trial is unconscionable as a matter of law and the provision shall be unenforceable. This section does not prohibit parties from entering into agreements to arbitrate or engage in other forms of alternative dispute resolution. (1993, c. 463, s. 5; 1993 (Reg. Sess., 1994), c. 763, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 463, s. 5 having been G.S. 22B-2.

CASE NOTES

An agreement to arbitrate a dispute is not an unenforceable contract requiring waiver of a jury; thus, the trial court erred in concluding that because arbitration provision did not provide for trial of facts by a jury that it was unconscionable and unenforceable under this section, and in violation of N.C. Const., Art. I, § 18 and 25. Miller v. Two State Constr. Co., 118 N.C. App. 412, 455 S.E.2d 678 (1995).

Severability of Provision. — Federal district court held that a forum selection clause was not contrary to North Carolina public policy as set forth in G.S. 22B-10 where, although the agreement purported to waive plaintiff's right to a jury trial, even if this provision were unconscionable, the court would not have had to strike the entire forum selection clause in order to strike the jury waiver provision. Price v. Leasecomm Corp., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 5467 (M.D.N.C. Mar. 31, 2004).

Bylaw Requirement Requiring Vote Before Bringing Suit. — Trial court properly dismissed a property owners association's suit against its developer, which asserted claims of constructive fraud and unfair and deceptive trade practices, for lack of standing on the part of the association, because the association failed to obtain a two-thirds vote of its membership authorizing the suit, as was required by its bylaws; as a result, the trial court lacked subject matter jurisdiction and properly granted the developer's motion to dismiss and motion for summary judgment. Peninsula Prop. Owners Ass'n v. Crescent Res., LLC, 171 N.C. App. 89, 614 S.E.2d 351, 2005 N.C. App. LEXIS 1165 (2005), cert. denied, — N.C. —, 626 S.E.2d 648 (2005).

§§ 22B-11 through 22B-19: Reserved for future codification purposes.

ARTICLE 3.

Deed Restrictions, Covenants, and Other Agreements Prohibiting Solar Collectors.

§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) Except as provided in subsection (d) of this section, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property on land subject to the deed restriction, covenant, or agreement is void and unenforceable. As used in this section, the term "residential property" means property where the predominant use is for residential purposes. The term "residential property" does not include any condominium created under Chapter 47A or 47C of the General Statutes located in a multi-story building containing units having horizontal boundaries described in the declaration. As used in this section, the term "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the chapter of the General Statutes under which the condominium was created.

(c) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would regulate the location or screening of solar collectors as described in subsection (b) of this section, provided the deed restriction, covenant, or similar binding agreement does not have the effect of preventing the reasonable use of a solar collector for a residential property. If an owners' association is responsible for exterior maintenance of a structure containing individual residences, a deed restriction, covenant, or similar binding agreement that runs with the land may provide that (i) the title owner of the residence shall be responsible for all damages caused by the installation, existence, or removal of solar collectors; (ii) the title owner of the residence shall hold harmless and indemnify the owners' association for any damages caused by the installation, existence, or removal of solar collectors; and (iii) the owners' association shall not be responsible for maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a written agreement that is recorded in the office of the register of deeds in the county or counties in which the property is situated. As used in this section, "owners' association" has the same meaning as in G.S. 47F-1-103.

(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;
(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or
(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2007-279, s. 3; 2009-553, s. 3.)

Local Modification. — Town of Carrboro: 1987, c. 476, as added by 2009-427, s. 1.

Editor's Note. — Session Laws 2007-279, s. 4, made this Article effective October 1, 2007, and applicable to deed restrictions, covenants, or similar binding agreements that run with the land recorded on or after that date.

Effect of Amendments. — Session Laws 2009-553, s. 3, effective December 1, 2009, and applicable to deed restrictions, covenants, or similar binding agreements that run with the land and that are recorded on or after that date, substituted "residential property" for "detached single-family residence" in the first sentences of subsections (b) and (c); added the second through fourth sentences in subsection (b); and added the second and third sentences in subsection (c).

Chapter 22C.

Payments to Subcontractors.

Sec.
22C-1. Definitions.
22C-2. Performance by subcontractor.
22C-3. Time of payment to subcontractors after contractor or other subcontractor has been paid.
Sec.
22C-4. Conditions of payment.
22C-5. Late payments to bear interest.
22C-6. Applicability of this Chapter.

§ 22C-1. Definitions.

Unless the context otherwise requires in this Chapter:

(1) "Contractor" means a person who contracts with an owner to improve real property.

(2) "Improve" means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapters 83A, 89C or 89A of the General Statutes.

(3) "Improvement" means all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.

(4) An "owner" is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

(5) "Real property" means the real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(6) "Subcontractor" means any person who has contracted to furnish labor or materials to, or has performed labor for, a contractor or another subcontractor in connection with a contract to improve real property. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

§ 22C-2. Performance by subcontractor.

Performance by a subcontractor in accordance with the provisions of its contract shall entitle it to payment from the party with whom it contracts. Payment by the owner to a contractor is not a condition precedent for payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent for payment to any other subcontractor, and an agreement to the contrary is unenforceable. (1987 (Reg. Sess., 1988), c. 946, s. 1; 1991, c. 620, s. 1.)

CASE NOTES

Timing of Payment to Subcontractor. — Section 22C-3 addresses only the issue of what is to be done when the general contractor has already been paid, but says nothing about what happens when the owner does not pay; in effect, it sets an outer boundary for payment to the subcontractor of seven days after the general contractor has been paid, but it does not eliminate the possibility that the subcontractor may be entitled to payment earlier than that. If the legislature had intended to overturn the rule established by Howard-Green Elec. Co. v. Chaney & James Constr. Co., 12 N.C. App. 63, 182 S.E.2d 601 (1971), it would have done so in unmistakable language. Statesville Roofing & Heating Co. v. Duncan, 702 F. Supp. 118 (W.D.N.C. 1988).

Illegal "Pay When Paid Provision Was Severable and Did Not Defeat Notice of Delay Provision. — Although the "pay when paid" clause of a contract was unenforceable, it was severable from the rest of the contract and did not defeat the notice of delay provision, which was not dependent on the illegal provision; thus, summary judgment was affirmed in favor of a general contractor in a case brought by a subcontractor claiming damages from a delay caused by a general contractor where the subcontractor failed to comply with contractual notice of delay time requirements. Am. Nat'l Elec. Corp. v. Poythress Commer. Contrs., Inc., 167 N.C. App. 97, 604 S.E.2d 315, 2004 N.C. App. LEXIS 2056 (2004).

§ 22C-3. Time of payment to subcontractors after contractor or other subcontractor has been paid.

When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within seven days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or service provided under the subcontract. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

CASE NOTES

This section addresses only the issue of what is to be done when the general contractor has already been paid, but says nothing about what happens when the owner does not pay; in effect, it sets an outer boundary for payment to the subcontractor of seven days after the general contractor has been paid, but it does not eliminate the possibility that the subcontractor may be entitled to payment earlier than that. If the legislature had intended to overturn the rule established by Howard-Green Elec. Co. v. Chaney & James Constr. Co., 12 N.C. App. 63, 182 S.E.2d 601 (1971), it would have so in unmistakable language. Statesville Roofing & Heating Co. v. Duncan, 702 F. Supp. 118 (W.D.N.C. 1988).

§ 22C-4. Conditions of payment.

Nothing in this Chapter shall prevent the contractor, at the time of application and certification to the owner, from withholding such application and certification to the owner for payment to the subcontractor for: unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

§ 22C-5. Late payments to bear interest.

Should any periodic or final payment to a subcontractor be delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay his subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or a fraction thereof on such unpaid balance as may be due. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

§ 22C-6. Applicability of this Chapter.

The provisions of this Chapter shall not be applicable to residential contractors as defined in G.S. 87-10(1a), or to improvements to real property intended for residential purposes which are exempted from the application of Chapter 83A of the General Statutes pursuant to G.S. 83A-13(c)(1), or to improvements to real property intended for residential purposes which consist of 12 or fewer residential units. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

Chapter 23.

Debtor and Creditor.

Article 1.

Assignments for Benefit of Creditors.

Sec.
23-1. Debts mature on execution of assignment; no preferences.
23-2. Trustee to file schedule of property.
23-3. Trustee to recover property conveyed fraudulently or in preference.
23-4. Substitute for incompetent trustee appointed in special proceeding.
23-5. Insolvent trustee removed unless bond given; substitute appointed.
23-6. Trustee removed on petition of creditors; substitute appointed.
23-7. Substituted trustee to give bond.
23-8. Only perishable property sold within ten days of registration.
23-9. Creditors to file verified claims with clerk; false swearing misdemeanor.
23-10. Priority of payments by trustee.
23-11. Trustee to account quarterly; final account in twelve months.
23-12. Trustee violating duties guilty of misdemeanor.

Article 2.

Petition of Insolvent for Assignment for Creditors.

23-13. Petition; schedule; inventory; affidavit.
23-14. Clerk to give notice of petition.
23-15. Order of discharge and appointment of trustee.
23-16. Terms and effect of order of discharge.
23-17. Suggestion of fraud by opposing creditor.

Article 3.

Trustee for Estate of Debtor Imprisoned for Crime.

23-18. Persons who may apply for trustee for imprisoned debtor.
23-19. Superior court appoints; copy of sentence to be produced.
23-20. Duties of trustee; accounting; oath.
23-21. Court may appoint several trustees.
23-22. Court may remove trustee and appoint successor.

Article 4.

Discharge of Insolvent Debtors.

23-23. Insolvent debtor's oath.
Sec.
23-24. Persons imprisoned for nonpayment of costs in criminal cases.
23-25. Petition; before whom; notice; service.
23-26. Warrant issued for prisoner.
23-27. Proceeding on application.
23-28. Suggestion of fraud.
23-29. Persons taken in arrest and bail proceedings, or in execution.
23-30. When petition may be filed.
23-30.1. Provisional release.
23-31. Petition; contents; verification.
23-32. Notice; length of notice and to whom given.
23-33. Who may suggest fraud.
23-34. Where no suggestion of fraud, discharge granted.
23-35. Continuance granted for cause.
23-36. Where fraud in issue, discharge only after trial.
23-37. If fraud found, debtor imprisoned.
23-38. Effect of order of discharge.

Article 5.

General Provisions under Articles 2, 3, and 4.

23-39. Superior or district court tries issue of fraud.
23-40. Insolvent released on giving bond.
23-41. Surety in bond may surrender principal.
23-42. Creditor liable for jail fees.
23-43. False swearing; penalty.
23-44. Powers of trustees hereunder.
23-45. Jail bounds.

Article 6.

Practice in Insolvency and Certain Other Proceedings, G.S. 23-46, 23-47.

23-46. Unlawful to solicit claims of creditors in proceedings.
23-47. Violation of preceding section a misdemeanor.

Article 7.

Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages.

23-48. Local units authorized to avail themselves of provisions of bankruptcy law.

ARTICLE 1.

Assignments for Benefit of Creditors.

§ 23-1. Debts mature on execution of assignment; no preferences.

Upon the execution of any voluntary deed of trust or deed of assignment for the benefit of creditors, all debts of the maker thereof shall become due and payable at once, and no such deed of trust or deed of assignment shall contain any preferences of one creditor over another, except as hereinafter stated. (1893, c. 453; Rev., s. 967; 1909, c. 918, s. 1; C.S., s. 1609.)

Cross References. — As to exempt property, see G.S. 1C-1601 et seq.

North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2007-323, ss. 22.1(a)-(f), provide for continuation and expansion of the North Carolina Home Protection Pilot Program. See note at G.S. 122A-1.

For previous similar provisions, see Session Laws 2005-276, ss. 20.2(a)-(f).

Editor's Note. — Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

CASE NOTES

The relief afforded by this section is statutory and does not arise out of common law. Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969), aff'd, 276 N.C. 198, 171 S.E.2d 873 (1970).

This section does not define an assignment for benefit of creditors, but merely forbids a preference in such assignment. Wilson v. Crab Orchard Dev. Co., 276 N.C. 198, 171 S.E.2d 873 (1970).

What Constitutes an Assignment. — The Supreme Court has held that where a person who is insolvent makes an assignment of practically all his property to secure a pre-existing debt, there being also other creditors, such instrument will be treated as an assignment for the benefit of creditors and subject to the statutes relating thereto, and neither the omission of a small part of the debtor's property nor a defeasance clause in the instrument will change this result. National Bank v. Gilmer, 116 N.C. 684, 22 S.E. 2 (1895); National Bank v. Gilmer, 117 N.C. 416, 23 S.E. 333 (1895); Glanton v. Jacobs, 117 N.C. 427, 23 S.E. 335 (1895); Cooper v. McKinnon, 122 N.C. 447, 29 S.E. 417 (1898); Pearre v. Folb, 123 N.C. 239, 31 S.E. 475 (1898); Brown v. Nimocks, 124 N.C. 417, 32 S.E. 743 (1899); Taylor v. Lauer, 127 N.C. 157, 37 S.E. 197 (1900); Odom v. Clark, 146 N.C. 544, 60 S.E. 513 (1908); Powell Bros. v. McMullan Lumber Co., 153 N.C. 52, 68 S.E. 926 (1910); Farmers Banking & Trust Co. v. Tarboro Leaf Tobacco Co., 188 N.C. 177, 124 S.E. 158 (1924); Edwards v. Northwestern Bank, 39 N.C. App. 261, 250 S.E.2d 651 (1979), aff'd, 53 N.C. App. 492, 281 S.E.2d 86 (1981).

A general assignment for the benefit of creditors is ordinarily a conveyance by a debtor without consideration from the grantee of substantially all his property in trust to collect the amount owing to him, to sell and convey the property, to distribute the proceeds of all the property among his creditors, and to return the surplus, if any, to the debtor. Wilson v. Crab Orchard Dev. Co., 276 N.C. 198, 171 S.E.2d 873 (1970).

Same — Deed to Secure Advancements. — Where the purpose of a deed is to secure payment not only of pre-existing debts but also of debts to be contracted for advancements to aid grantors in carrying on their business, then said deed is not a voluntary deed of assignment for the benefit of creditors, within the meaning of this article. Commissioner of Banks v. Turnage, 202 N.C. 485, 163 S.E. 451 (1932).

Same — Mortgage. — Where a mortgage is made of the entirety of a large estate for pre-existing debts (omitting only in an insignificant remnant of property), the mortgage is in effect an assignment for the benefit of creditors secured therein. National Bank v. Gilmer, 116 N.C. 684, 22 S.E. 2 (1895); National Bank v. Gilmer, 117 N.C. 416, 23 S.E. 333 (1895).

A chattel mortgage, attempted to be executed by an insolvent corporation owing other creditors, to secure a pre-existing debt on practically all of its property, will be treated as an assignment and void, unless the requirements of the statute have been complied with, and no lien otherwise on the property described therein can be thereby created. Farmers Banking & Trust Co. v. Tarboro Leaf Tobacco Co., 188 N.C. 177, 124 S.E. 158 (1924).

But a chattel mortgage on a stock of goods, securing the purchase price, cannot be deemed an assignment for the benefit of creditors where the secured debt is contemporaneous with the contract of purchase, as a part of one continuous transaction. Cowan v. Dale, 189 N.C. 684, 128 S.E. 155 (1925).

A chattel mortgage of an insolvent corporation, executed and registered before the appointment of a receiver for it, will not be construed under the provisions of this section as in effect an assignment for the benefit of creditors in the absence of the fact that the property covered by the mortgage constitutes practically all of the property of the insolvent. Vanderwal v. Vanco Dairy Co., 200 N.C. 314, 156 S.E. 512 (1931).

A mortgage, given by an insolvent person upon substantially all of his property to secure a preexisting debt so as to prefer the beneficiary of the mortgage over his other creditors, is void as a preferential assignment for the benefit of creditors forbidden by this section. Wilson v. Crab Orchard Dev. Co., 276 N.C. 198, 171 S.E.2d 873 (1970).

By Whom Assignment Made — Corporations. — A corporation, through its proper officers, may make an assignment for the benefit of creditors. Potts v. Wallace, 146 U.S. 689, 13 S. Ct. 196, 36 L. Ed. 1135 (1892).

Same — Partnerships. — In Tracy v. Tuffly, 134 U.S. 206, 10 S. Ct. 527, 33 L. Ed. 879 (1890), it is held that a partnership, whether general or limited, may, through its proper officers, make an assignment for the benefit of creditors.

Same — Trustees. — In accordance with the rule that trustees must unite to pass any title to property jointly held by them, where there are two or more trustees of the property of insolvents, all should join therein. Wilbur v. Almy, 53 U.S. (12 How.) 180, 13 L. Ed. 944 (1851).

A voluntary and preferential deed of trust is also within the condemnation of this section. Wilson v. Crab Orchard Dev. Co., 276 N.C. 198, 171 S.E.2d 873 (1970).

"Voluntary" Defined. — "Voluntary" has been defined as "without consideration." Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969), aff'd, 276 N.C. 198, 171 S.E.2d 873 (1970).

Validity of Preferential Transfer by Insolvent Debtor. — Apart from the provisions of this section and § 23-2 a transfer, admittedly preferential, by a debtor admittedly insolvent, is not unlawful or subject to attack on that ground. Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967).

It is not unlawful for an insolvent debtor to transfer his property in exchange for other property of a different form. Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967).

Transfer to Corporation in Exchange for Stock. — A transfer of property by an insolvent debtor to a corporation newly formed for the purpose of satisfying creditors, in exchange for shares of stock in that corporation is a transfer for value, at least where it appears that shares were issued to other stockholders for cash, and the transfer is not an unlawful or invalid assignment. Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967).

Where defendant assigns his rights in certain certificates of deposit to a corporate defendant and in return for these certificates the corporate defendant assigns all shares of its corporate stock to the defendant to be used by him in satisfying his creditors, the transfer to the corporate defendant is for a valuable consideration and is, therefore, not an assignment for the benefit of creditors as envisioned by this section. Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969), aff'd, 276 N.C. 198, 171 S.E.2d 873 (1970).

Provision as to Maturity of Debts Applies to Sureties. — The provision that all debts of the maker become due at once applies to the sureties upon a note of the assignor. Pritchard v. Mitchell, 139 N.C. 54, 51 S.E. 783 (1905).

Effect of Void Assignment. — If a deed of assignment for the benefit of creditors becomes void as to creditors, its primary and essential purpose is defeated, and it is totally invalid. The assignee does not take the property for his own benefit, but for the benefit of the creditors, and while he holds the legal title, they are really the equitable owners to the extent of their claims. Whatever defeats their interest defeats the object of the trust and, consequently, the trust itself. Cooper v. McKinnon, 122 N.C. 447, 29 S.E. 417 (1898).

Same — Fraud Need Not Be Shown. — A voluntary conveyance, declared invalid for not complying with the provisions of this Article, is not only void as to bona fide unsecured creditors, but inter partes; and hence it would be unnecessary for such creditors to show fraud in its procurement in order to set it aside. Powell Bros. v. McMullan Lumber Co., 153 N.C. 52, 68 S.E. 926 (1910).

Assignment Omitting Creditors Is Preference. — An assignment for the benefit of creditors, omitting certain other creditors, is invalid as a preference. Taylor v. Lauer, 127 N.C. 157, 37 S.E. 197 (1900).

Effect of Subsequent Bankruptcy. — Where an assignment for the benefit of creditors was made under this section more than four months before the debtor was adjudged a bankrupt under the federal law, the assignment was valid and whatever was done under it was valid. The court of bankruptcy cannot take retroactive cognizance of trusts beyond four months and, hence, will merely administer the estate as it exists at the time of the adjudication. In re Carver, 113 F. 138 (E.D.N.C. 1902).

Assignment Is Irrevocable. — It has been held in Barings v. Dabney, 86 U.S. 1, 22 L. Ed. 90 (1873), that a voluntary assignment for the benefit of creditors, if assented to by the creditors, or a considerable portion of them, becomes irrevocable.

Statute of Limitations. — The three-year statute of limitation applies to a creditor's action for relief under this section. Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969), aff'd, 276 N.C. 198, 171 S.E.2d 873 (1970).

Accrual of Cause of Actions. — The cause of action under this section accrues at the time of the assignments and the statutory period begins to run at that time. Wilson v. Crab Orchard Dev. Co., 5 N.C. App. 600, 169 S.E.2d 50 (1969), aff'd, 276 N.C. 198, 171 S.E.2d 873 (1970).

Cited in Mascot Stove Mfg. Co. v. Turnage, 183 N.C. 137, 110 S.E. 779 (1922); Estridge v. Crab Orchard Dev. Co., 5 N.C. App. 604, 169 S.E.2d 53 (1969); Snyder v. Freeman, 300 N.C. 204, 266 S.E.2d 593 (1980).

§ 23-2. Trustee to file schedule of property.

Upon the execution of such deed of trust, the trustee, whether named therein or appointed as hereafter provided for, shall file with the clerk of the superior court of the county in which said deed of trust is registered, within ten days after the registration thereof, an inventory under oath, giving a complete, full and perfect account of all property that has come into his hands or to the hands of any person for him, by virtue of such deed of trust, and when further property of any kind not included in any previous return comes to the hands or knowledge of such trustee he shall return the same as hereinbefore prescribed within ten days after the possession or discovery thereof. (1893, c. 453, s. 2; Rev., s. 968; C.S., s. 1610.)

CASE NOTES

Assignment Is Void Unless Section Complied with. — An assignment for the benefit of creditors is void unless the formalities of this section are complied with as to filing an inventory of the property, and will be set aside at the suit of a creditor whose debt is not therein provided for. Odom v. Clark, 146 N.C. 544, 60 S.E. 513 (1908).

If the provisions of this section are not complied with, the deeds of trust are void. Virginia Trust Co. v. Pharr Estates, 206 N.C. 894, 175 S.E. 186 (1934).

Validity of Preferential Transfer by Insolvent Debtor. — Apart from the provisions of § 23-1 and this section a transfer, admittedly preferential, by a debtor admittedly insolvent, is not unlawful or subject to attack on that ground. Estridge v. Denson, 270 N.C. 556, 155 S.E.2d 190 (1967).

Cited in Flowers v. American Agrl. Chem. Co., 199 N.C. 456, 154 S.E. 736 (1930).

§ 23-3. Trustee to recover property conveyed fraudulently or in preference.

It is the duty of the trustee to recover, for the benefit of the estate, property which was conveyed by the grantor or assignor in fraud of his creditors, or which was conveyed or transferred by the grantor or assignor for the purpose of giving a preference. A preference, under this section, shall be deemed to have been given when property has been transferred or conveyed within four months next preceding the registration of the deed of trust or deed of assignment in consideration of the payment of a pre-existing debt, when the grantee or transferee of such property knows or has reasonable ground to believe that the grantor or assignor was insolvent at the time of making such conveyance or transfer. (1909, c. 918, s. 2; C.S., s. 1611.)

CASE NOTES

Purpose of Section Is to Avoid Certain Preferences. — On proper consideration of this section, its terms and purpose, it is clear that the legislature intended to prohibit and avoid, as a wrongful preference, any and every disposition of real or personal property, absolute or conditional, by which a creditor, in consideration of an existent or antecedent debt and within four months of a general assignment by his debtor, acquires title to such debtor's property or any interest therein or lien thereon, when he knew or had reasonable ground to believe that his grantor or assignor was insolvent at the time the transfer or conveyance was made. Wooten v. Taylor, 159 N.C. 604, 76 S.E. 11 (1912); Teague v. Howard Grocery Co., 175 N.C. 195, 95 S.E. 173 (1918).

Preferences Were Valid at Common Law. — A debtor unable to pay his indebtedness in full has an undoubted right, in the absence of a statute, to make preferences in the distribution of his property among the creditors, when the appropriation is absolute and with no reservation for his own benefit to the injury of creditors unprovided for. Guggenheimer v. Brookfield, 90 N.C. 232 (1884).

At common law a debtor may, in the exercise of the power arising from the ownership of property, if acting conscientiously and without collusion, prefer certain of his creditors to the detriment or exclusion of the others. United States Rubber Co. v. American Oak Leather Co., 181 U.S. 434, 21 S. Ct. 670, 45 L. Ed. 938 (1901).

Real and Personal Property Included in Section. — This section requiring the trustee in a general assignment for creditors to recover property "conveyed or transferred by the grantor or assignor" in preference, within the four months' period, includes within its meaning both real and personal property, and the general methods by which the title is passed or interest therein created, and extends to an executed contract of sale. Teague v. Howard Grocery Co., 175 N.C. 195, 95 S.E. 173 (1918).

Commencement of Four Months' Period. — The four months' period mentioned in this section is to be counted from the time the transfer or conveyance was made, and not from the time of its registration. Wooten v. Taylor, 159 N.C. 604, 76 S.E. 11 (1912).

Conveyance by Solvent Debtor Is Not Preference. — Where a solvent debtor conveys practically all of his property to secure a pre-existing debt, having other creditors at the time, it does not create a preference within the intent and meaning of this section. Flowers v. American Agrl. Chem. Co., 199 N.C. 456, 154 S.E. 736 (1930).

Meaning of "Insolvent". — "Insolvent" means unable to meet liabilities after converting all of the property or assets belonging to the person or estate into money, at market prices, and applying the proceeds, with the cash previously on hand, to the payment of them. Silver Valley Mining Co. v. North Carolina Smelting Co., 119 N.C. 417, 25 S.E. 954 (1896).

Same — Applied to Corporation. — A corporation is not insolvent, so as to render a mortgage of its property fraudulent, so long as it has property sufficient, if converted into money at market prices, to meet its liabilities. Silver Valley Mining Co. v. North Carolina Smelting Co., 119 N.C. 417, 25 S.E. 954 (1896).

Preference Is Recoverable although Deed of Assignment Is Made Subject Thereto. — A deed of general assignment for the benefit of creditors, by expressly being made subject to a prior mortgage of the grantor's property, wherein an unlawful preference is given, will not, of itself, prevent a recovery of the property conveyed in the mortgage by the trustee in the deed in trust for the general creditors. Wooten v. Taylor, 159 N.C. 604, 76 S.E. 11 (1912).

Purchase-Money Mortgage Is Not Preference. — A chattel mortgage on a stock of goods to secure the purchase price, the mortgagor retaining possession, is not a preference within this section. Cowan v. Dale, 189 N.C. 684, 128 S.E. 155 (1925).

Nor Is Judgment against Debtor. — A judgment duly rendered by a court of competent jurisdiction against a debtor assigning his property to a trustee for the benefit of creditors is not a transfer or conveyance of property by the assignor, although the judgment is rendered within four months prior to the assignment to the trustee, and the judgment is not a preference prohibited by this section, and will not be declared void upon suit of the trustee. Pritchett v. Tolbert, 210 N.C. 644, 188 S.E. 71 (1936).

Thus, Execution Levied Prior to Registration of Deed of Assignment Creates Prior Lien. — Where a valid judgment is rendered within four months prior to an assignment for benefit of creditors by the judgment debtor, and execution is issued thereon and personal property of the debtor levied upon prior to the registration of the deed of assignment, the judgment is a lien upon the personal property levied upon prior to the title of the trustee in the deed of assignment. Pritchett v. Tolbert, 210 N.C. 644, 188 S.E. 71 (1936).

Assignees Have Right and Duty to Defend Suits. — It is the duty of assignees for the benefit of creditors, who have once accepted the trust, not only to appear, but so far as the nature of the transaction and the facts and circumstances of the case will admit or warrant, to defend suits to set aside the assignments. Chittenden v. Brewster, 69 U.S. 191, 17 L. Ed. 839 (1864).

Applied in Edwards v. Northwestern Bank, 39 N.C. App. 261, 250 S.E.2d 651 (1979).

§ 23-4. Substitute for incompetent trustee appointed in special proceeding.

When a trustee named in a deed of assignment for the benefit of creditors has died or resigned or has in any way become incompetent to execute the trust, the clerk of the superior court of the county wherein said deed of assignment has been registered is authorized and empowered, in a special proceeding in which all persons interested have been made parties, to appoint some discreet and competent person to act as such trustee and to execute all the trusts created in the original deed of assignment, according to its true intent and as fully as if originally appointed trustee therein. (1915, c. 176, s. 1; C.S., s. 1612.)

Cross References. — As to appointment of successor to incompetent trustee, see G.S. 45-9.

§ 23-5. Insolvent trustee removed unless bond given; substitute appointed.

Upon the complaint of any creditor of the assignor or trustee in such deed of trust, alleging under oath that the trustee named therein is insolvent, and asking that he be required to give bond or be removed, it is the duty of the clerk of the superior court of the county in which such deed of trust is registered, upon a notice of not more than ten days to such trustee, to hear the complaint. If upon such hearing the clerk is satisfied that such trustee is insolvent, he shall remove such trustee and appoint some competent person to execute the provisions of such deed of trust, unless such insolvent trustee shall file with the clerk a good and sufficient bond, to be approved by him, in a sum double the value of the property in the deed of trust, payable to the State of North Carolina, and conditioned that such trustee shall faithfully execute and carry into effect the provisions of said deed of trust. (1893, c. 453, s. 3; Rev., s. 969; C.S., s. 1613.)

CASE NOTES

Section Throws Greater Safeguards around Assignments. — While formerly it was entirely competent for a debtor to assign his property to an insolvent person who was otherwise qualified to execute the provisions of the deed of trust for the benefit of creditors, the policy of the law has since been declared by this section to throw greater safeguards around such transactions by requiring every trustee of this kind to give bond when proper application for that purpose is made to the clerk. Preiss v. Cohen, 112 N.C. 278, 17 S.E. 520 (1893).

§ 23-6. Trustee removed on petition of creditors; substitute appointed.

Upon the written petition of one-fourth of the number of the creditors of the grantor or assignor whose claims aggregate more than fifty per cent of the total indebtedness of said grantor or assignor, the clerk of the superior court of the county in which said deed of trust or deed of assignment is registered, upon a notice of not more than ten days to said trustee of said petition, shall remove said trustee and appoint some competent person to execute the provisions of such deed of trust or deed of assignment. (1909, c. 918, s. 3; C.S., s. 1614.)

§ 23-7. Substituted trustee to give bond.

Upon the removal or resignation of any trustee it is the duty of the clerk to require the person appointed to execute the provisions of such deed of trust, before entering upon his duties, to file with the clerk a good and sufficient bond, to be approved by him in a sum double the value of the property in said deed of trust, payable to the State of North Carolina, and conditioned that such person shall faithfully execute and carry into effect the provisions of said deed of trust. (1893, c. 453, s. 3; Rev., s. 970; 1909, c. 918, s. 4; 1915, c. 176, s. 2; C.S., s. 1615.)

§ 23-8. Only perishable property sold within ten days of registration.

It is unlawful for any trustee, whether named in such deed of trust or appointed by a clerk of the superior court, to sell any part of the property described in such deed of trust within ten days from the registration thereof, unless such property or some part thereof be perishable, in which case he may sell such property as is perishable, according to the powers conferred upon him in said deed of trust. (1893, c. 453, s. 4; Rev., s. 971; C.S., s. 1616.)

§ 23-9. Creditors to file verified claims with clerk; false swearing misdemeanor.

All creditors of the maker of such deed of trust shall, before receiving payment of any amount from the said trustee, file with the clerk of the superior court a statement under oath that the amount claimed by him is justly due, after allowing all credits and offsets, to the best of his knowledge and belief. Any creditor who shall knowingly swear falsely in such statement shall be guilty of a Class 1 misdemeanor. (1893, c. 453, ss. 6, 7; Rev., ss. 972, 3617; C.S., s. 1617; 1993, c. 539, s. 397; 1994, Ex. Sess., c. 14, s. 34; c. 24, s. 14(c).)

CASE NOTES

Creditors Claiming Under Deed Cannot Impeach It. — Creditors who claim under a deed of trust and file their claims to share in the proceeds of sale cannot be heard to impeach its provisions. Chard v. Warren, 122 N.C. 75, 29 S.E. 373 (1898).

§ 23-10. Priority of payments by trustee.

The trustee, after paying the necessary costs of the administration of the trust, shall pay as speedily as possible

(1) All debts which are a lien upon any of the trust property in his hands, to the extent of the net proceeds of the property upon which such debt is a lien;

(2) Wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before registration of said deed of trust or deed of assignment, and

(3) All other debts equally ratable. (1909, c. 918, s. 5; C.S., s. 1618.)

CASE NOTES

No Discrimination Except as Provided. — Except for the two classes mentioned in this section, all discrimination among creditors is forbidden. Wooten v. Taylor, 159 N.C. 604, 76 S.E. 11 (1912).

Section Does Not Authorize Preference to Clerks on Appointment of Receiver. — See Mascot Stove Mfg. Co. v. Turnage, 183 N.C. 137, 110 S.E. 779 (1922).

§ 23-11. Trustee to account quarterly; final account in twelve months.

The trustee, whether named in the deed of trust or appointed by a clerk of a superior court, shall within three months from the registration of such deed of trust, and at each succeeding period of three months, file with the clerk of the superior court of the county in which the same is registered an account under oath, stating in detail his receipts and disbursements and his action as trustee, and within twelve months he shall file his final account of his administration of his trust. The clerk may upon good cause shown extend the time within which the quarterly and final accounts herein provided for are to be filed. (1893, c. 453, s. 5; Rev., s. 973; C.S., s. 1619.)

§ 23-12. Trustee violating duties guilty of misdemeanor.

If any trustee in a deed of trust for the benefit of creditors shall fail to file his inventory as required by law, or shall knowingly make any false statement in such inventory, or shall knowingly fail to include any property therein, or shall sell any part of the property described in the deed of trust within ten days unless such property so sold be perishable, or shall fail to file either of the quarterly accounts or the final accounts as required by law, or shall knowingly make any false statement in such quarterly or final account, or shall knowingly fail to include any property, money or disbursement in such quarterly or final account, he shall, in either case, be guilty of a Class 1 misdemeanor. (1893, c. 453, s. 8; Rev., s. 3689; C.S., s. 1620; 1993, c. 539, s. 398; 1994, Ex. Sess., c. 24, s. 14(c).)

ARTICLE 2.

Petition of Insolvent for Assignment for Creditors.

§ 23-13. Petition; schedule; inventory; affidavit.

Every insolvent debtor may present a petition in the superior court, praying that his estate may be assigned for the benefit of all his creditors, and that his person may thereafter be exempt from arrest or imprisonment on account of any judgment previously rendered or of any debts previously contracted. On presenting such petition, every insolvent shall deliver therewith a schedule containing an account of his creditors and an inventory of his estate, which inventory shall contain —

(1) A full and true account of his creditors, with the place of residence of each, if known, and the sum owing to each creditor, whether on written security, on account, or otherwise.

(2) A full and true inventory of his estate, real and personal, with the encumbrances existing thereon, and all books, vouchers and securities relating thereto.

(3) A full and true inventory of all property, real and personal, claimed by him as exempt from sale under execution.

He shall annex to his petition and schedule the following affidavit, which must be taken and subscribed by him before the clerk of the superior court, and must be certified by such officer:

I, ________, do swear (or affirm) that the account of my creditors, with the places of their residence, and the inventory of my estate, which are herewith delivered, are in all respects just and true; that I have not at any time or in any manner disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view that they, or any of them, should abstain or desist from opposing my discharge: so help me, God. (1868-9, c. 162, ss. 1, 2, 3; Code, ss. 2942, 2943, 2944; Rev., s. 1930; C.S., s. 1621.)

Cross References. — As to prohibition against imprisonment for debt, see N.C. Const., Art. I, § 16, 17. As to execution against the person, see G.S. 1-311. As to provisional remedy of arrest, see G.S. 1-409 et seq.

CASE NOTES

Debtor Must Show Compliance. — To avail himself of this article, a petitioner not under arrest must show that he has complied with the provisions of this article and obtained an order of discharge under G.S. 23-15, 23-16. Howie v. Spittle, 156 N.C. 180, 72 S.E. 207 (1911).

Debtor Should Set Out Facts as to Property Interest. — Defendant having filed the schedule of his property, it was not only proper, but necessary, that he should set out the facts showing what right, title, estate and interest he held in the real estate. Edwards v. Sorrell, 150 N.C. 712, 64 S.E. 898 (1909).

Defendant in Alienation Suit May Have Benefit of Section. — A suit by one charging the defendant with alienating the affections of his wife, and arresting and holding him for bail under the affidavits required, is one entitling the defendant to the benefit of this section for the relief of insolvent debtors. Edwards v. Sorrell, 150 N.C. 712, 64 S.E. 898 (1909).

§ 23-14. Clerk to give notice of petition.

On receiving the petition, schedule and affidavit, the clerk of the superior court shall make an order requiring all the creditors of such insolvent to show cause before said officer, within thirty days after publication of the order, why the prayer of the petitioner should not be granted, and shall post a notice of the contents of the order at the courthouse door and three other public places in the county where the application is made for four successive weeks; or, in lieu thereof, shall publish the same for three successive weeks in any newspaper published in said county, or in an adjoining county. (1868-9, c. 162, ss. 4, 5; Code, ss. 2945, 2946; Rev., s. 1931; C.S., s. 1622.)

§ 23-15. Order of discharge and appointment of trustee.

If no creditor oppose the discharge of the insolvent, the clerk of the superior court before whom the hearing of the petition is had shall enter an order of discharge and appoint a trustee of all the estate of such insolvent. (1868-9, c. 162, s. 6; Code, s. 2947; Rev., s. 1932; C.S., s. 1623.)

§ 23-16. Terms and effect of order of discharge.

The order of discharge shall declare that the person of such insolvent shall forever thereafter be exempted from arrest or imprisonment on account of any judgment, or by reason of any debt due at the time of such order, or contracted for before that time, though payable afterwards. But no debt, demand, judgment or decree against any insolvent, discharged under this chapter, shall be affected or impaired by such discharge, but the same shall remain valid and effectual against all the property of such insolvent acquired after his discharge and the appointment of a trustee; and the lien of any judgment or decree upon the property of such insolvent shall not be in any manner affected by such discharge. (1868-9, c. 162, s. 9; Code, s. 2950; Rev., s. 1933; C.S., s. 1624.)

Cross References. — As to prohibition against imprisonment for debt, see N.C. Const., Art. I, § 16, 17. As to execution against the person, see G.S. 1-311. As to provisional remedy of arrest, see G.S. 1-409 et seq.

CASE NOTES

This section protects from future arrests for the same debt such as have surrendered their property. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

But after-acquired property may be subject to execution and sale, in proper cases. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891). See also Brown v. Long, 22 N.C. 138 (1838), which holds that the subsequently acquired property of a discharged debtor may be reached in equity.

§ 23-17. Suggestion of fraud by opposing creditor.

Every creditor opposing the discharge of the insolvent may suggest fraud and set forth the particulars thereof in writing, verified by his oath; but the insolvent shall not be compelled to answer the suggestions of fraud in more than one case, though as many creditors as choose may make themselves parties to the issues in such cases. (1868-9, c. 162, s. 7; Code, s. 2948; Rev., s. 1934; C.S., s. 1625.)

CASE NOTES

Suggestion of Fraud in Bastardy Proceeding. — A mother of an illegitimate child, to whom an allowance has been made in bastardy proceedings, is such a creditor of the father of her child as to permit her to oppose the insolvent's discharge by suggesting fraud in answer to his petition. State v. Parsons, 115 N.C. 730, 20 S.E. 511 (1894).

Same — As to Fine and Costs. — When defendant in bastardy proceedings has been ordered to pay a fine and costs and allowance to the mother, only the State can suggest fraud as to the fine and costs. State v. Parsons, 115 N.C. 730, 20 S.E. 511 (1894).

Answer Held Not to Suggest Fraud. — One who has another arrested and held to bail for alienating the affections of his wife does not raise an issue or suggestion of fraud under this section by answering the petition for discharge, and denying a statement therein made by petitioner that he is advised by counsel that, owing to the condition of the title to certain lands scheduled, an execution could not issue against it, as such statement is surplusage. Edwards v. Sorrell, 150 N.C. 712, 64 S.E. 898 (1909).

All Creditors May Be Required to Join in One Issue. — Where a debtor is arrested under different ca. sa.'s at the instance of several creditors, if he applies for his discharge as an insolvent debtor, and fraud is suggested in answer to his application, he has a right to require that all the creditors he may notify shall join in the trial of one issue, and the court will so direct. Williams v. Floyd, 27 N.C. 649 (1845).

But this is for the ease of the debtor, and he may waive the privilege by joining issue with each creditor, and then a verdict in his favor in one case will not discharge him from the responsibility in the case of another creditor. Williams v. Floyd, 27 N.C. 649 (1845).

Article 3.

Trustee for Estate of Debtor Imprisoned for Crime.

§ 23-18. Persons who may apply for trustee for imprisoned debtor.

When any debtor is imprisoned in the penitentiary for any term, or in a county jail for any term more than 12 months, application by petition may be made by any creditor, the debtor, or by his or her spouse, or any of his or her relatives, for the appointment of a trustee to take charge of the estate of such debtor. (1868-9, c. 162, s. 40; Code, s. 2974; Rev., s. 1943; C.S., s. 1626; 1977, c. 549.)

§ 23-19. Superior court appoints; copy of sentence to be produced.

The application must be made to the superior court of the county where the debtor was convicted, and upon producing a copy of the sentence of such debtor, duly certified by the clerk of the court, together with an affidavit of the applicant that such debtor is actually imprisoned under such sentence, and is indebted in any sum, the clerk or the judge may immediately appoint a trustee of the estate of such debtor. (1868-9, c. 162, ss. 41, 42; Code, s. 2975; Rev., s. 1944; C.S., s. 1627.)

§ 23-20. Duties of trustee; accounting; oath.

The trustee of the imprisoned debtor shall pay his debts pro rata. After paying such debts, the trustee shall apply the surplus, from time to time, to the support of the wife and children of the debtor, under the direction of the superior court. When the imprisoned debtor is lawfully discharged from his imprisonment, the trustee shall deliver to him all the estate, real and personal, of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor. The trustee shall make his returns and have his accounts audited and settled by the clerk of the superior court of the county where the proceeding was had, in like manner as provided for personal representatives. Before proceeding to the discharge of his duty, the trustee shall take and subscribe an oath, well and truly to execute his trust according to his best skill and understanding. The oath must be filed with the clerk of the superior court. (1868-9, c. 162, ss. 43, 45, 46; Code, ss. 2976, 2978, 2979; Rev., ss. 1945, 1946, 1947; C.S., s. 1628.)

§ 23-21. Court may appoint several trustees.

The court has power, when deemed necessary, to appoint more than one person trustee under this chapter; but in reference to the rights, authorities and duties conferred herein, all such trustees shall be deemed one person in law. (1868-9, c. 162, s. 47; Code, s. 2980; Rev., s. 1948; C.S., s. 1629.)

§ 23-22. Court may remove trustee and appoint successor.

In case of the death, removal, resignation or other disability of a trustee, the court making the appointment may from time to time supply the vacancy; and all proceedings may be continued by the successor in office in like manner as in the first instance. (1868-9, c. 162, s. 48; Code, s. 2981; Rev., s. 1949; C.S., s. 1630.)

ARTICLE 4.

Discharge of Insolvent Debtors.

§ 23-23. Insolvent debtor's oath.

Prisoners in order to be entitled to discharge from imprisonment under the provisions of this article shall take the following oath:

I, ________, do solemnly swear (or affirm) that I have not the worth of fifty dollars in any worldly substance, in debts, money or otherwise whatsoever, and that I have not at any time since my imprisonment or before, directly or indirectly, sold or assigned, or otherwise disposed of, or made over in trust for myself or my family, any part of my real or personal estate, whereby to have or expect any benefit, or to defraud any of my creditors: so help me, God. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 31; 1881, c. 76; Code, s. 2972; Rev., s. 1918a; C.S., s. 1631.)

CASE NOTES

Constitutionality. — This section does not contravene the constitutional provision in regard to homestead and personal property exemptions, as the prisoner can discharge himself from custody by paying the fine and costs or by complying with the provisions of this article and taking the oath prescribed. State v. Williams, 97 N.C. 414, 2 S.E. 370 (1887).

Liberal Construction. — In Wood v. Wood, 61 N.C. 538 (1868), it is stated that chapter 59 of the Revised Code (the provisions of which are contained in this Article) has always received a liberal interpretation.

Debtor Must Follow Provisions. — When a person is taken by authority of an execution against his person by virtue of the provisions of G.S. 1-311, he can be discharged from imprisonment only by payment or by giving notice and surrender of all his property in excess of $50.00 as provided in this section and G.S. 23-30 through 23-38. Allred v. Graves, 261 N.C. 31, 134 S.E.2d 186 (1964).

Cited in Moorefield v. Roseman, 198 N.C. 805, 153 S.E. 399 (1930).

§ 23-24. Persons imprisoned for nonpayment of costs in criminal cases.

The following persons may be discharged from imprisonment upon complying with this article and G.S. 153-194:

Every person committed for the fine and costs of any criminal prosecution. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 26; Code, s. 2967; Rev., s. 1915; C.S., s. 1632; 1933, c. 228, s. 9.)

Editor's Note. — Section 153-194, referred to in this section, was transferred to G.S. 162-45 by Session Laws 1973, c. 822, s. 3. The section was repealed by Session Laws 1977, c. 711, s. 33.

Legal Periodicals. — For note on imprisonment of an indigent at low per diem rate for failure to pay fine, see 6 Wake Forest Intra. L. Rev. 509 (1970).

CASE NOTES

Purpose of Section. — This section was manifestly intended to be construed as permitting a defendant convicted in a criminal proceeding, or found to be the father of an illegitimate child, to file a petition before the clerk designating the time when he wished to apply for a discharge. State v. Parsons, 115 N.C. 730, 20 S.E. 511 (1894).

Person Committed for Fine and Costs May Be Discharged. — One committed for the fine and costs of a criminal prosecution, after remaining in jail twenty days, may be discharged upon complying with provisions of G.S. 23-25. State v. Davis, 82 N.C. 610 (1880).

Where Prisoner Was Found Guilty on Three Indictments. — There were three indictments against a prisoner to one of which he pleaded guilty, and judgment was suspended on the payment of costs, and he was found guilty on the other two, on one of which he was sentenced to imprisonment for ten days. After remaining in jail for the term of his imprisonment and twenty days additional, the prisoner took the oath prescribed and applied for his discharge; it was held, that he was entitled to his discharge in all three cases. State v. McNeely, 92 N.C. 829 (1885).

Cited in State v. Williams, 97 N.C. 414, 2 S.E. 370 (1887); State v. Morgan, 141 N.C. 726, 53 S.E. 142 (1906); State v. Bradshaw, 214 N.C. 5, 197 S.E. 564 (1938); State v. Bryant, 251 N.C. 423, 111 S.E.2d 591 (1959).

§ 23-25. Petition; before whom; notice; service.

Every such person, having remained in prison for 20 days, may apply by petition to the court where the judgment against him was entered, praying to be brought before such court at a time and place to be named in the petition, and to be discharged upon taking the oath hereinbefore prescribed. The applicant shall cause 10 days' notice of the time and place of filing the petition to be served on the sheriff or other officer by whom he was committed. In cases of conviction before a magistrate the clerk of the superior court of the county where the convicted person confined for costs is, may administer the oath and discharge the prisoner. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, ss. 27, 28; 1873-4, c. 90; 1874-5, c. 11; Code, ss. 2968, 2969; 1891, c. 195; Rev., s. 1916; C.S., s. 1633; 1971, c. 1190, s. 1.)

CASE NOTES

Insolvent's Application Is Proceeding in Cause in Which Convicted. — The application of an insolvent confined for the nonpayment of costs is a proceeding in the cause in which he was convicted, and should be made by petition to the court wherein the judgment against him was entered. State v. Miller, 97 N.C. 451, 1 S.E. 776 (1887).

Prisoner May Appeal to Judge If Clerk Refuses to Give Oath. — If the clerk should refuse to allow the prisoner to take the oath, the remedy is by an appeal to the judge holding the courts of that district. State v. Miller, 97 N.C. 451, 1 S.E. 776 (1887), intimating that release of prisoner on writ of habeas corpus by judge of adjoining district is irregular.

Twenty-Day Provision Is Mandatory. — Whether a defendant has property or not, he must remain in jail the twenty days, or pay the fine and costs, since the officers could not waive the imprisonment, nor had the judge the power to dispense with it. State v. Davis, 82 N.C. 610 (1880).

Neither the judge nor solicitor has the right to allow a defendant to take the insolvent's oath and obtain his discharge without remaining in prison for twenty days. State v. Bryan, 83 N.C. 611 (1880).

§ 23-26. Warrant issued for prisoner.

The clerk of the superior court before whom such petition is presented shall forthwith issue a warrant to the sheriff, or keeper of the prison, requiring him to bring the prisoner before the court, at the time and place named for the hearing of the case, which warrant every such sheriff or keeper shall obey. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 29; Code, s. 2970; Rev., s. 1917; C.S., s. 1634; 1971, c. 1190, s. 2.)

§ 23-27. Proceeding on application.

At the hearing of the petition, if the prisoner has no visible estate, and takes and subscribes the oath or affirmation prescribed in this Article, the clerk of the superior court before whom he is brought, shall administer the oath or affirmation to him, and discharge him from imprisonment, of which an entry shall be made in the docket of the court. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 30; Code, s. 2971; Rev., s. 1918; C.S., s. 1635; 1971, c. 1190, s. 3.)

§ 23-28. Suggestion of fraud.

The chairman of the board of commissioners, and every officer interested in the fee bill taxed against such prisoner, may oppose his taking the insolvent debtor's oath above prescribed, and file particulars of the suggestion in writing, in the court where the same shall stand for trial as prescribed in this chapter in other cases of fraud or concealment. (1868-9, c. 162, s. 32; Code, s. 2973; Rev., s. 1919; C.S., s. 1636.)

§ 23-29. Persons taken in arrest and bail proceedings, or in execution.

The following persons also are entitled to the benefit of this article as hereinafter provided:

(1) Every person taken or charged on any order of arrest for default of bail, or on surrender of bail in any action.

(2) Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever. (1868-9, c. 162, s. 10; Code, s. 2951; Rev., s. 1920; C.S., s. 1637; 1967, c. 24, s. 5; c. 1078.)

Cross References. — As to arrest and bail, see G.S. 1-409 to 1-439.

CASE NOTES

Construed with §§ 1-417 and 1-419. — This section should be construed with G.S. 1-417 and 1-419, and, so construed, the remedies given by this section are in addition to those given by the other sections mentioned. Edwards v. Sorrell, 150 N.C. 712, 64 S.E. 898 (1909).

Persons Within Scope of Section. — The terms of this section are as broad and sweeping as they well can be. They do not, in any view of them as to the purpose intended, imply limitation or discrimination. They plainly embrace "every person" taken or charged to be arrested by virtue of "any order of arrest," not specially for a tort, or for fraud, or other particular cause of action as to which a person may be arrested, but for any cause of action, no matter what may be its nature, if the person is arrested in a case wherein he may lawfully be so arrested. They, in plain, strong terms, embrace any such arrest made or ordered to be made in any action whatever — that is, an action in which a person — a party — may be so arrested. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

The provisions of this section are broad and strong, and plainly extend to and embrace every person who may be arrested by virtue of an order of arrest issued pursuant to the provisions of G.S. 1-410, and also extend to and embrace every person who has been seized by virtue of an execution against his person by authority of the provisions of G.S. 1-311. Allred v. Graves, 261 N.C. 31, 134 S.E.2d 186 (1964).

The benefits of this section extend as well to those arrested for torts as for debt, and the debt growing out of one is no more a debt and no more entitled to an extraordinary process for its collection than the other. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

The provisions of this section extend to and embrace every person arrested or to be arrested in a civil action on account of any cause of action specified in G.S. 1-410. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

Nonresidents Are Included. — The benefits of the section are not confined to residents of this State. There is no provision in it, or any other statute, within our knowledge, that in terms or by reasonable implication declares that a nonresident shall not be discharged from arrest in a civil action, if he makes the complete surrender of his estate as prescribed. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

Discharge May Be Sought After Motion to Vacate Arrest Denied. — Where a party is under arrest in a civil action and his motion to vacate the arrest has been denied, he may seek his discharge under the provisions of this section. Wing v. Hooper, 98 N.C. 482, 4 S.E. 463 (1887).

But Exempt Property over $50 Must Be Surrendered. — A judgment debtor against whose person execution has been issued cannot be discharged except by payment, or giving notice and surrender of all property in excess of $50, and the effect of the execution against the person is to deprive him of his homestead and his personal property exemption over and above $50. Oakley v. Lasater, 172 N.C. 96, 89 S.E. 1063 (1916).

Cited in Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977).

§ 23-30. When petition may be filed.

Every person taken or charged as in the preceding section [§ 23-29] specified may, at any time after his arrest or imprisonment, petition the court from which the process issued on which he is arrested or imprisoned, for his discharge therefrom, on his compliance with this chapter. (R.C., c. 59, s. 3; 1868-9, c. 162, s. 11; Code, s. 2952; Rev., s. 1921; C.S., s. 1638.)

CASE NOTES

Persons Included. — This section in the broadest terms embraces "every person taken or charged as in the preceding section specified." Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

Cause of Action Immaterial. — The debtor is entitled to be discharged upon the honest surrender of his property in the way prescribed, whether the cause of action on account of which he was arrested was a fraudulent debt, or a tort, or of other nature as to which he might be arrested. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

§ 23-30.1. Provisional release.

Every person who has filed a petition under the provisions of G.S. 23-30 shall be brought before a judge within 72 hours after filing the petition and shall be provisionally released from imprisonment unless a hearing shall be held and the creditor shall establish that the prisoner has fraudulently concealed assets. If, at the time he is brought before a judge, the prisoner makes a showing of indigency, counsel shall be appointed for the prisoner in accordance with rules adopted by the Office of Indigent Defense Services. A provisional release under this section shall not constitute a discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud even if he has unsuccessfully attempted to oppose the provisional release on the basis of fraudulent concealment. The debtor may be provisionally released even though actual service upon the creditor has not been accomplished if 72 hours has passed since the debtor delivered the notice to the sheriff for service upon the creditor. (1977, c. 649, s. 5; 2000-144, s. 32; 2001-487, s. 13.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B, G.S. 7A-498 et seq.

Legal Periodicals. — For survey of 1977 law on civil procedure, see 56 N.C.L. Rev. 874 (1978).

§ 23-31. Petition; contents; verification.

The petition shall set forth cause of the imprisonment, with the writ or process and complaint on which the same is founded, and shall have annexed to it a just and true account of all his estate, real and personal, and of all charges affecting such estate, as they exist at the time of filing his petition, together with all deeds, securities, books or writings whatever relating to the estate and the charges thereon; and also what property, real and personal, the petitioner claims as exempt from sale under execution, and shall have annexed to it on oath or affirmation, subscribed by the petitioner and taken before any person authorized by law to administer oaths, to the effect following:

I, ________, the within named petitioner, do swear (or affirm) that the within petition and account of my estate, and of the charges thereon, are, in all respects, just and true; and that I have not at any time or in any manner disposed of or made over any part of my property, with a view to the future benefit of myself or my family, or with an intent to injure or defraud any of my creditors: so help me, God. (R.C., c. 59, s. 3; 1868-9, c. 162, ss. 12, 13; Code, ss. 2953, 2954; Rev., s. 1922; C.S., s. 1639.)

§ 23-32. Notice; length of notice and to whom given.

Twenty days notice of the time and place at which the petition will be filed, together with a copy of such petition and the account annexed thereto, shall be personally served by such debtor on the creditor or creditors at whose suit he is arrested or imprisoned, and such other creditors as the debtor may choose, or their personal representatives or attorneys. If the person to be notified reside out of the State, and has no agent or attorney in the State, the notice may be served on the officer having the claim to collect, or by two weekly publications in any newspaper in the State. (1773, c. 100, s. 8, P.R.; R.C., c. 59, ss. 3, 20; 1868-9, c. 162, s. 14; Code, s. 2955; Rev., s. 1923; C.S., s. 1640.)

CASE NOTES

Constitutionality. — The 20-day notice requirement of this section is constitutionally deficient and may not be enforced. Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977), aff'd, 434 U.S. 978, 98 S. Ct. 600, 54 L. Ed. 2d 473 (1977).

This section postpones unconscionably and unconstitutionally, as a violation of procedural due process, the right of one imprisoned to have his day in court. Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977), aff'd, 434 U.S. 978, 98 S. Ct. 600, 54 L. Ed. 2d 473 (1977).

Reasonable Notice to Be Required Pending Legislative Correction of Constitutional Infirmity. — See Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977), aff'd, 434 U.S. 978, 98 S. Ct. 600, 54 L. Ed. 2d 473 (1977).

Only Creditors Notified Are Affected. — The party arrested and seeking relief must notify the creditors or plaintiff at whose suit he is arrested, but he may or may not notify other creditors of his application to surrender his property and be discharged from arrest, and only such creditors as may be so notified will be affected by his discharge. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

§ 23-33. Who may suggest fraud.

Every creditor upon whom the notice directed in G.S. 23-32 is served may suggest fraud upon the hearing of the petition, and the issues made up respecting the fraud shall stand for trial as in other cases. (1822, c. 1131, s. 4, P.R.; 1835, c. 12; R.C., c. 59, s. 13; 1868-9, c. 162, s. 15; Code, s. 2956; Rev., s. 1924; C.S., s. 1641.)

CASE NOTES

Petitioner May Demand Oath and Jury Trial. — A petitioner is entitled to insist that suggestions of fraud, made by a creditor, shall be verified by the oath of the creditor and tried by a jury; and it is error in a judge to decide upon such suggestions, without submitting them in an issue to a jury. Purvis v. Robinson & Co., 49 N.C. 96 (1856). See also, State v. Carroll, 51 N.C. 458 (1859).

§ 23-34. Where no suggestion of fraud, discharge granted.

If no creditor suggests fraud or opposes the discharge of the debtor, the clerk of the superior court before whom the petition is heard shall forthwith discharge the debtor, and, if he surrenders any estate for the benefit of his creditors, shall appoint a trustee of such estate. The order of discharge and appointment shall be entered in the docket of the court. (1773, c. 100, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 16; Code, s. 2957; Rev., s. 1925; C.S., s. 1642; 1971, c. 1190, s. 4.)

CASE NOTES

Discharge Held Improper. — Where a debtor arrested and imprisoned for fraud did not tender the oath required by G.S. 23-23, nor surrender his homestead and personal property exemptions, nor file the petition, nor give the notice required by G.S. 23-32, he was improperly discharged upon an affidavit that he had theretofore made an assignment of all his property for the benefit of creditors and that he was at the date of the affidavit insolvent and not worth more than the exemptions allowed him by law as set apart to him. Raisin Fertilizer Co. v. Grubbs, 114 N.C. 470, 19 S.E. 597 (1894).

Proper Remedy to Secure Tort Damages. — The proper remedy of the party seeking to establish and secure his damages for tort is to have a trustee appointed, under this section, to hold and distribute among creditors when and as soon as all debts are ascertained. Burgwyn v. Hall, 108 N.C. 489, 13 S.E. 222 (1891).

Applied in Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977).

§ 23-35. Continuance granted for cause.

When it appears to the court that any debtor, who may have given bond for his appearance under this chapter, is prevented from attending court by sickness or other sufficient cause, the case shall be continued to another day, or to the next term, when the same proceedings shall be had as if the debtor had appeared according to the condition of his bond, and in the event of his death in the meantime, his bond shall be discharged. (1822, c. 1131, s. 1, P.R.; R.C., c. 59, s. 10; 1868-9, c. 162, s. 18; Code, s. 2959; Rev., s. 1926; C.S., s. 1643.)

Cross References. — As to the insolvent's bond, see G.S. 23-40.

CASE NOTES

The extreme sickness of the principal would excuse his nonappearance, and entitle him and his surety to a continuance if that appeared to the court. But where it was not made to appear, the court could not properly continue it. Buis v. Arnold, 53 N.C. 233 (1860).

But Not Sickness of Surety. — Under this section the sickness of the surety is no excuse for the default of the principal. Speight v. Wooten, 14 N.C. 327 (1832).

§ 23-36. Where fraud in issue, discharge only after trial.

After an issue of fraud or concealment is made up, the debtor shall not discharge himself as to the creditors in that issue, except by trial and verdict in the same, or by a discharge by consent. (R.C., c. 59, s. 17; 1868-9, c. 162, s. 21; Code, s. 2962; Rev., s. 1927; C.S., s. 1644.)

CASE NOTES

This section only applies to cases where the defendant is in lawful custody and by virtue of an authority competent to order it. Houston & Co. v. Walsh, 79 N.C. 35 (1878).

Applied in Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977).

§ 23-37. If fraud found, debtor imprisoned.

If, on the trial, the jury finds that there is any fraud or concealment, the judgment shall be that the debtor be imprisoned until a full and fair disclosure and account of all his money, property or effects be made by the debtor. (1822, c. 1131, s. 4, P.R.; 1835, c. 12; R.C., c. 59, s. 14; 1868-9, c. 162, s. 20; Code, s. 2961; Rev., s. 1928; C.S., s. 1645.)

CASE NOTES

Must Surrender Property Fraudulently Conveyed. — An insolvent debtor included in his schedule "all his interest in certain property assigned to S.C." On an issue found, the jury found the deed assigning such property fraudulent. It was held that the debtor should be imprisoned until he should make a surrender of the whole of such property. Hutton v. Self, 28 N.C. 285 (1846).

Not in Execution as to Other Creditor. — A debtor convicted of fraudulent concealment of his effects, upon an issue between him and A, and ordered into custody thereupon, according to this section, is not in execution at the suit of B, another creditor, in whose case no such concealment was found or suggested. Folsom v. Gregory, 12 N.C. 233 (1827).

Applied in Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977).

§ 23-38. Effect of order of discharge.

The order of discharge under the last four articles of this chapter, whether granted upon a nonsuggestion of fraud, upon the finding of a jury in favor of the debtor, or otherwise, shall be in like terms and have like effect as prescribed in G.S. 23-16; except that the body of such debtor shall be free from arrest or imprisonment at the suit of every creditor, and as to him only, to whom the notice required may have been given; and the notices, or copies thereof, shall in all cases be filed in the office of the superior court clerk. (1822, c. 1131, s. 4, P.R.; 1835, c. 12; R.C., c. 59, s. 11; 1868-9, c. 162, s. 19; Code, s. 2960; Rev., s. 1929; C.S., s. 1646.)

CASE NOTES

Discharge Under Section Distinguished from Release under § 23-32. — See Grimes v. Miller, 429 F. Supp. 1350 (M.D.N.C. 1977), aff'd, 434 U.S. 978, 98 S. Ct. 600, 54 L. Ed. 2d 473 (1977).

Debt Is Not Discharged. — The discharge of the principal, under the insolvent debtor's law, is not a discharge of the debt. Norment v. Alexander, 32 N.C. 71 (1849).

Protects against Those Notified. — The discharge of an insolvent protects him from arrest by those creditors only who had notice of his intention to apply for a discharge. Crain v. Long, 14 N.C. 371 (1832); Norment v. Alexander, 32 N.C. 71 (1849); Rountree v. Waddill, 52 N.C. 309 (1859). See note to § 23-32.

ARTICLE 5.

General Provisions under Articles 2, 3, and 4.

§ 23-39. Superior or district court tries issue of fraud.

In every case where an issue of fraud is made up as provided in this Chapter, the case shall be entered in the trial docket of the superior or district court, and stand for trial as other causes; and upon a finding by the jury in favor of the petitioner the judge shall discharge the debtor; if the finding is against the petitioner he shall be committed to jail until he makes full disclosure. (1868-9, c. 162, s. 8; Code, s. 2949; Rev., s. 1935; C.S., s. 1647; 1971, c. 1190, s. 5.)

CASE NOTES

Upon the suggestion of fraud an issue is raised which should be entered upon the trial docket of the superior court and stand for trial as other causes. State v. Parsons, 115 N.C. 730, 20 S.E. 511 (1894).

Issue Can Be Made Up When Schedule Shows Deed of Trust. — When one who applies to take the insolvent debtor's oath, upon rendering a schedule, sets forth in his schedule that he has made a deed in trust of certain property to satisfy certain creditors, and surrenders all his interests in the property mentioned in such deed, it is still competent for the opposing creditor to have an issue made up whether the said deed is not fraudulent, and if found fraudulent by a jury, to cause the debtor to be imprisoned until he surrenders the property itself. Adams v. Alexander, 23 N.C. 501 (1841).

When Jury Finds Deed Fraudulent, Debtor Is Imprisoned Until Property Surrendered. — Where an insolvent debtor, in filing his schedule, only surrenders his interest in certain property, conveyed by a deed in trust, and the jury, upon an issue, finds the deed fraudulent, he must be imprisoned until he makes a surrender of the whole property so conveyed. Hutton v. Self, 28 N.C. 285 (1846).

§ 23-40. Insolvent released on giving bond.

Every debtor entitled under the provisions of this chapter to discharge as an insolvent may, at the time of filing his application for a discharge or at any time afterwards, tender to the sheriff or other officer having his body in charge, a bond, with sufficient surety, in double the amount of the sum due any creditor or creditors at whose suit he was taken or charged, conditioned for the appearance of such debtor before the court where his petition is filed, at the hearing thereof, and to stand to and abide by the final order or decree of the court in the case. If such bond be satisfactory to the sheriff, he shall forthwith release such debtor from custody. (R.C., c. 59, s. 27; 1868-9, c. 162, s. 17; Code, s. 2958; Rev., s. 1936; C.S., s. 1648.)

Cross References. — As to surety company being sufficient surety, see G.S. 58-73-5.

CASE NOTES

When Bond May Be Given. — The insolvent may give bond during the pendency of and until the final determination of the proceedings. Howie v. Spittle, 156 N.C. 180, 72 S.E. 207 (1911).

Sufficient Condition. — A condition "to appear and claim the benefit of the act, etc., and not depart without leave," is substantially the same as that prescribed by this section. Mooring v. James, 13 N.C. 254 (1829).

Who Prepares Bond. — Whether it is the duty of the officer or the defendant to prepare the bond to be given for the defendant's appearance, quaere. Winslow v. Anderson, 20 N.C. 1 (1838).

Day for Appearance Must Be Certain. — The bond for the defendant's appearance, under this section, is in the nature of process to compel an appearance, and the day stated in the condition for appearance must be certain. Winslow v. Anderson, 20 N.C. 1 (1838).

Where Date in Bond Erroneous. — Where a bond was conditioned for the defendant's appearance at the next term of court to be held upon a stated day, and, at the next term which sat at a date earlier than that mentioned in the bond, the defendant did not appear, it was error to take a judgment against him and his surety for default since there was no default of appearance according to the bond. Winslow v. Anderson, 20 N.C. 1 (1838).

Amount of Bond. — A bond given under this section for the appearance of an insolvent to court is good if it is for double the original debt, exclusive of interest and costs, and judgment, on motion may be rendered on it. Williams v. Yarbrough, 13 N.C. 12 (1828).

Defendant Cannot Object to Bond. — A defendant who has given bond under this section cannot object to the informality of the bond and pray a discharge on account thereof. Page v. Winningham, 18 N.C. 113 (1834).

Nor to Ca. Sa. While Released on Bond. — Where a defendant gives bond under the insolvent act, and while he is at large by virtue thereof, he is not entitled to his discharge on account of the fact that the ca. sa. is voidable; nor can he move, under such circumstances, to quash the proceedings on that account. Bryan v. Brooks, 51 N.C. 580 (1859).

Defendant Bound to Attend Every Term. — The defendant in a ca. sa. bond given under this section is bound to attend at every term until the cause is finally disposed of. Arrington v. Bass, 14 N.C. 95 (1831).

Condition Is Broken by Default after Continuance. — Where the defendant in the ca. sa. appeared at the return day of the writ, and upon an issue being made up, the cause was continued, and afterwards the defendant made a default, it was held that the condition of the bond was broken and the plaintiff entitled to judgment. Mooring v. James, 13 N.C. 254 (1829).

§ 23-41. Surety in bond may surrender principal.

The surety in any bond conditioned for the appearance of any person under this chapter may surrender the principal, or such principal may surrender himself, in discharge of the bond, to the sheriff or other officer of any court where such principal is bound to appear, in the manner provided in the chapter entitled Civil Procedure, article Arrest and Bail. (1793, c. 100, s. 7, P.R.; c. 380, s. 1, P.R.; 1822, c. 1131, s. 3, P.R.; R.C., c. 59, s. 23; 1868-9, c. 162, s. 22; Code, s. 2963; Rev., s. 1937; C.S., s. 1649.)

Cross References. — As to exoneration of bail in arrest and bail, see G.S. 1-433. As to surrender of defendant by bail, see G.S. 1-434. As to arrest of defendant by bail, see G.S. 1-435.

CASE NOTES

Right of Person Surrendered. — A person who is surrendered in discharge of his bail is entitled to the benefit of this chapter for the relief of insolvent debtors. Smallwood v. Wood, 19 N.C. 356 (1837).

Where Surrender to Be Made. — Sureties to a ca. sa. bond, to protect themselves by a surrender of their principal, must make it in the court to which the ca. sa. is returnable, or to the sheriff of that county; where the writ issues to another county, a surrender to the sheriff of it is a nullity. Mooring v. James, 13 N.C. 254 (1829).

Invalid Surrender. — Where a prisoner was brought into open court by his bail, and it was announced, publicly, that he had surrendered, but was unknown to the sheriff, to the plaintiff, and to the plaintiff's counsel, and he was a stranger to all present, except to the bail and the presiding judge, and upon being ordered in custody, he fled from the courtroom and escaped, without having been in the custody of the sheriff, it was held that these facts did not amount to a valid surrender. Rountree v. Waddill, 52 N.C. 309 (1859).

Surrender Cannot Be Made After Judgment Against Surety. — When the principal obligor in a bond is regularly called at court, and, failing to appear, judgment is rendered against him and his surety, the surety has no right ex debito justitiae to come in on a subsequent day of the term and have the judgment set aside, in order to allow him to make a surrender of his principal. Reynolds v. Boyd, 23 N.C. 106 (1840).

§ 23-42. Creditor liable for jail fees.

When any debtor is actually confined within the walls of a prison, on an order of arrest in default of bail or otherwise, the jailer must furnish him with necessary food during his confinement, if the prisoner requires it, for which the jailer shall have the same fees as for keeping other prisoners. If the debtor is unable to discharge such fees, the jailer may recover them from the party at whose instance the debtor was confined. And at any time after the arrest, the sheriff or jailer may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees that accrue after such notice, and if the plaintiff fails to give such security then the sheriff may discharge the debtor out of custody. (1773, c. 100, ss. 8, 9, P.R.; 1821, c. 1103, P.R.; R.C., c. 69, s. 5; 1868-9, c. 162, s. 24; Code, s. 2965; Rev., s. 1938; C.S., s. 1650.)

CASE NOTES

Common-Law Provision. — By the common law an imprisoned debtor was obliged to support himself, and, if unable to do so, was dependent upon the humanity of the jailer or of others. Veal v. Flake, 32 N.C. 417 (1849).

Effect of Section. — Where a man had been arrested and the issue had been continued from term to term, and his sureties had from time to time surrendered him and the issue had been decided against him and he had been committed to prison in all these cases, at the instance of the creditor, it was held that under this section the creditor was responsible to the jailer for his fees or allowance for the food furnished to the prisoner during the whole time he was confined in jail. Veal v. Flake, 32 N.C. 417 (1849).

Where Prison Bounds Allowed. — When a debtor is committed to prison, and is permitted to take the prison bounds, the jailer is not under any obligation, while he continues in the bounds, to furnish him provisions for his support, nor, of course, can the creditor, at whose suit he is confined, be compelled to reimburse the jailer for any sum so expended. Phillips v. Allen, 35 N.C. 10 (1851).

Sheriff Cannot Bring Action. — The action against the creditor for the jail fees of an insolvent debtor, given by this section to the jailer, cannot be maintained by the sheriff as the jailer's principal. Bunting v. McIlhenny, 61 N.C. 579 (1868).

§ 23-43. False swearing; penalty.

If any insolvent or imprisoned debtor takes any oath prescribed in this chapter falsely and corruptly, that person is guilty of a Class I felony, and he shall never after have any of the benefits of this chapter, but may be sued and imprisoned as though he had never been discharged. (1793, c. 100, s. 10, P.R.; R.C., c. 59, s. 25; 1868-9, c. 162, s. 23; Code, s. 2964; Rev., ss. 1940, 3614; C.S., s. 1651; 1993, c. 539, s. 1263; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 23-44. Powers of trustees hereunder.

Any trustee appointed under the last four articles of this chapter, as therein contemplated, is hereby declared a trustee of the estate of the debtor, in respect to whose property such trustee is appointed for the benefit of creditors, and is invested from the time of appointment with all the powers and authority, and subject to the control, obligations and responsibilities prescribed by law in relation to personal representatives over the estates of deceased persons; but all debts shall be paid by the trustees pro rata. (1773, c. 100, ss. 5, 6, P.R.; 1827, c. 44; 1830, c. 26, s. 2; R.C., c. 59, ss. 21, 22; 1868-9, c. 162, s. 44; Code, s. 2977; Rev., s. 1941; C.S., s. 1652.)

§ 23-45. Jail bounds.

Any imprisoned debtor may take the benefit of the prison bounds by giving security, as required by law, except as follows:

(1) A debtor against whom an issue of fraud is found.

(2) Any debtor who, for other cause, is adjudged to be imprisoned until he makes a full and fair disclosure or account of his property. (1818, c. 964, P.R.; R.C., c. 59, s. 27; 1868-9, c. 162, s. 25; Code, s. 2966; Rev., s. 1942; C.S., s. 1653.)

ARTICLE 6.

Practice in Insolvency and Certain Other Proceedings.

§ 23-46. Unlawful to solicit claims of creditors in proceedings.

It shall be unlawful for any individual, corporation, or firm or other association of persons, to solicit of any creditor any claim of such creditor in order that such individual, corporation, firm or association may represent such creditor or present or vote such claim, in any bankruptcy or insolvency proceeding, or in any action or proceeding for or growing out of the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors. (1931, c. 208, s. 1.)

Cross References. — As to restrictions on appearance for creditor in insolvency proceedings, etc., see G.S. 84-9.

Legal Periodicals. — See 9 N.C.L. Rev. 348 (1931).

§ 23-47. Violation of preceding section a misdemeanor.

Any individual, corporation, or firm or other association of persons violating any provision of G.S. 23-46 shall be guilty of a Class 1 misdemeanor. (1931, c. 208, s. 3; 1993, c. 539, s. 399; 1994, Ex. Sess., c. 24, s. 14(c).)

ARTICLE 7.

Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages.

§ 23-48. Local units authorized to avail themselves of provisions of bankruptcy law.

With the approval of the Local Government Commission of North Carolina and with the consent of the holders of such percentage or percentages of its indebtedness as may be required by Public Act Number three hundred two of the Seventy-fifth Congress, First Session, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July first, one thousand eight hundred ninety-eight and Acts amendatory thereof and supplementary thereto," approved August sixteenth, one thousand nine hundred thirty-seven, as amended, any taxing district, local improvement district, school district, county, city, town or village in the State of North Carolina is authorized to avail itself of the provisions of said act of Congress as said act now exists or may be hereafter amended. (1939, c. 203.)

Legal Periodicals. — For comment on this section, see 17 N.C.L. Rev. 343 (1939).

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Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

Chapter 24.

Interest.

Article 1.

General Provisions.

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24-2.4. Prepayment of a loan if there are no prepayment terms or if the prepayment terms are not in accordance with law.
24-2.5. Mortgage bankers and mortgage brokers.
24-3. Time from which interest runs.
24-4. Obligations due guardians to bear compound interest; rate of interest.
24-5. Interest on judgments.
24-6. Clerk to ascertain interest upon default judgment on bond, covenant, bill, note or signed account.
24-7. Interest from verdict to judgment added as costs.
24-8. Loans not in excess of $300,000; what interest, fees and charges permitted.
24-9. Loans exempt from rate and fee limitations.
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24-13. Principal amount defined.
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24-16. Itemized closing statements.
24-16.1. Loans exempt from §§ 24-12 to 24-17.
24-17. Misdemeanors.

ARTICLE 1.

General Provisions.

§ 24-1. Legal rate is eight percent.

The legal rate of interest shall be eight percent (8%) per annum for such time as interest may accrue, and no more. (1876-7, c. 91; Code, s. 3835; 1895, c. 69; Rev., s. 1950; C.S., s. 2305; 1979, 2nd Sess., c. 1157, s. 1.)

Cross References. — As to the effect of the secured transaction provisions of the Uniform Commercial Code, see G.S. 25-9-201.

North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2007-323, ss. 22.1 (a)-(f), provide for continuation and expansion of the North Carolina Home Protection Pilot Program. See note at G.S. 122A-1.

For previous similar provisions, see Session Laws 2005-276, ss. 20.2(a)-(f).

Editor's Note. — Session Laws 1971, c. 1229, s. 2, effective July 1, 1971, designated §§ 24-1 through 24-11 as Article 1 of this Chapter.

The 1979, 2nd Sess., amendment, effective July 1, 1980, raised the legal rate of interest from six percent per annum to eight percent per annum. Session Laws 1979, 2nd Sess., c. 1157, s. 8, provided that the act would not apply to judgments entered prior to July 1, 1980.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Legal Periodicals. — For comment on usury law in North Carolina, see 47 N.C.L. Rev. 761 (1969).

For comment discussing usury limitations in North Carolina, in light of Western Auto Supply Co. v. Vick, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981), see 18 Wake Forest L. Rev. 947 (1982).

For note, "Judicially Imposed Usury Penalties in the Absence of Statutory Penalties: Can Freedom of Contract Co-Exist with Public Policy After Merritt v. Knox?," see 68 N.C.L. Rev. 1021 (1990).

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Definition of "Interest." — "Interest" is the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, as damages for its detention. Brown v. Hiatts, 82 U.S. 177, 21 L. Ed. 128 (1872).

The distinction between the "legal rate" of interest, and the "lawful rate" of interest, which is maintained in some states, and which appears in some of the older cases of this State, has not been preserved. Legal rate of interest implied the maximum rate at which interest could be charged upon an obligation in the absence of stipulation as to the rate; and a lawful rate of interest implied that rate of interest which could be lawfully stipulated without incurring the penalty of law. The former was six per cent, the latter eight. See Burwell v. Burgwyn, 100 N.C. 389, 6 S.E. 409 (1888).

Legal Rate Applicable Postjudgment. — Where contracts provided for a specific interest rate on past due accounts, that rate applied prejudgment but, where there was no agreement that such rate would apply postjudgment, the legal rate established by this section applied. Barrett Kays & Assocs. v. Colonial Bldg. Co., 129 N.C. App. 525, 500 S.E.2d 108 (1998).

This section declares the policy of this State with regard to usury. Pinnix v. Maryland Cas. Co., 214 N.C. 760, 200 S.E. 874 (1939).

New Rate of Interest Applies to All Interest Awarded on July 1, 1980, or Thereafter. — Section 8 of the bill which amended this section to change the legal rate of interest from six to eight percent provided that "this act shall not apply to judgments entered prior to July 1, 1980." The clear implication of this language is that the new rate of interest shall apply to all of the interest awarded in judgments entered on July 1, 1980, or thereafter, instead of just to that portion of the interest accruing after such date. EEOC v. Liggett & Myers, Inc., 690 F.2d 1072 (4th Cir. 1982).

Absent an agreement between parties, the legal rate is due on money owed under a contract. Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968).

In the absence of an agreement, the injured party in cases involving breach of contract is entitled to interest at the legal rate. Interstate Equip. Co. v. Smith, 292 N.C. 592, 234 S.E.2d 599 (1977).

And no discretion is vested in the court to determine what shall be the rate of interest in a given case. Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968).

Unless Defendant Agreed to Rate Set Pay Court. — Where defendant agreed to let the trial court set the rate of interest, he could not on appeal argue that the trial court lacked authority to set the interest rate above the legal rate. Coston v. Coston, 109 N.C. App. 306, 426 S.E.2d 460 (1993).

Regulating Interest Is Within Province of Legislature. — It is within the exclusive province of the lawmaking power to prescribe upon what conditions and at what rate interest can be allowed or contracted for, and what shall be a forfeiture of the right to collect it. Moore v. Beaman, 112 N.C. 558, 17 S.E. 676 (1893).

When Contract Is Usurious. — A contract will be declared usurious when it appears that it was the purpose and intent of the lender to charge and receive a greater rate of interest than that allowed by law under this section. Polikoff v. Finance Serv. Co., 205 N.C. 631, 172 S.E. 356 (1934).

Where interest rate on note was usurious and penalty of forfeiture was barred by the statute of limitation, interest allowed was not the maximum legal rate but the legal or judgment rate. Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989).

For the last three words of this section to be of any significance, it must necessarily be inferred that interest may be imposed on judgments at a rate less than 8% if requested by the party entitled to the interest. Where a plaintiff's attorney prepared a 1980 judgment asking for 6%, court would presume that is what he intended. Speros Constr. Co. v. Musselwhite, 103 N.C. App. 510, 405 S.E.2d 785 (1991).

Insurance Companies Are Not Authorized to Charge Interest in Excess of Legal Rate. — Section 58-32, dealing with loans by insurance companies secured by insurance policies, does not authorize insurance companies to charge interest in excess of the legal rate prescribed in this section. Cowan v. Security Life & Trust Co., 211 N.C. 18, 188 S.E. 812 (1936).

Premium for Privilege of Prepaying Notes. — A provision in a deed of trust that the borrower should pay a premium, in addition to accrued interest at the legal rate, upon the exercise of its privilege of prepaying the notes before maturity, is valid. Bell Bakeries, Inc. v. Jefferson Std. Life Ins. Co., 245 N.C. 408, 96 S.E.2d 408 (1957).

Documents Not Stating Interest Rate. — Promissory note, deed of trust and sales contract showing a face amount of $9,645.12, payable in 144 equal monthly installments, but not stating the specific interest rate charged, which interest was added to the amount of the note in advance, did not entitle defendants, who allegedly loaned plaintiffs only $5,600.00 and charged an illegal 10% thereon, to a directed verdict or judgment n.o.v. DeHart v. R/S Fin. Corp., 78 N.C. App. 93, 337 S.E.2d 94 (1985), cert. denied, 316 N.C. 375, 342 S.E.2d 893 (1986).

Fraudulent Procurement of Money. — No implied contract resulted from a defendant's act of fraudulently obtaining the money from a plaintiff or from a court's order that the defendant pay restitution to the plaintiff, because there was no meeting of the minds between the parties. The law in effect at the time of an agreement determines the rate of interest on an obligation only where an agreement has actually been reached. Otherwise, the law in effect at the time of judgment determines the rate of interest. Speros Constr. Co. v. Musselwhite, 103 N.C. App. 510, 405 S.E.2d 785 (1991).

Interest Determined by Law in Effect at Time of Agreement. — Where interest rate in contract was void and the legal rate in effect at the time the note was executed was six percent (6%), and subsequently changed to eight percent (8%) by an amendment to this section effective July 1, 1980, interest was determined by the law in effect at the time of the agreement, and changes in the legal rate were not applied retroactively. Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989).

Statute of limitations for usury claim was two years; where all details of borrowers' loan, including the interest rate, fees, and expenses, were disclosed before the closing in loan documents to the borrowers, who had the capacity and the opportunity to discover their claim but failed to do so, the statute of limitations for the borrowers' usury claim began to run on the date of the closing of their loan. Shepard v. Ocwen Fed. Bank, FSB, 172 N.C. App. 475, 617 S.E.2d 61, 2005 N.C. App. LEXIS 1810 (2005).

Where a plaintiff brought an action to prevent the 10-year statute of limitations from barring his recovery on a prior judgment, the action was in the nature of an independent action on the judgment, the only procedure in this state by which a judgment can be renewed. As it was a separate and distinct action, the plaintiff could request, in his complaint, interest at the legal rate of 8%, and the trial court could award interest at that rate from the date the present action was instituted until the judgment is satisfied. Speros Constr. Co. v. Musselwhite, 103 N.C. App. 510, 405 S.E.2d 785 (1991).

Postjudgment Interest Not Awardable Against State. — Retirees under the state and local government retirement system were not entitled to post-judgment interest on retroactive disability benefits, because the state retirement statutes contain no provision for the allowance of such interest. Faulkenbury v. Teachers' & State Employees' Ret. Sys., 132 N.C. App. 137, 510 S.E.2d 675, 1999 N.C. App. LEXIS 89 (1999), cert. denied, 350 N.C. 379, 536 S.E.2d 620 (1999).

Industrial commission properly awarded interest on retroactive attendant care for a comatose worker pursuant to G.S. 97-86.2, as that statute allowed for an award of interest pursuant to G.S. 24-1 on outstanding medical expenses, and the fact that the money was going directly to two relatives who were taking care of a worker in a vegetative state, rather than the worker himself, did not preclude the commission from awarding interest. Palmer v. Jackson, 161 N.C. App. 642, 590 S.E.2d 275, 2003 N.C. App. LEXIS 2266 (2003).

Maximum Legal Rate of Interest for Agricultural Loans. — Following a default judgment for a creditor against the debtors, the interest rate in a security agreement between the parties was incorrect under G.S. 24-1 because the maximum legal rate for the extension of credit for agricultural loans was capped at eight percent. Bartlett Milling Co., L.P. v. Walnut Grove Auction & Realty Co., — N.C. App. —, 665 S.E.2d 478, 2008 N.C. App. LEXIS 1546 (2008).

Applied in Hackney v. Hood, 203 N.C. 486, 166 S.E. 323 (1932); White v. Disher, 232 N.C. 260, 59 S.E.2d 798 (1950); DeBruhl v. State Hwy. & Pub. Works Comm'n, 247 N.C. 671, 102 S.E.2d 229 (1958); H.F. Mitchell Constr. Co. v. Orange County Bd. of Educ., 262 N.C. 295, 136 S.E.2d 635 (1964); Henderson v. Security Mtg. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968); United States v. Wachovia Corp., 313 F. Supp. 632 (W.D.N.C. 1970); Cordaro v. Singleton, 31 N.C. App. 476, 229 S.E.2d 707 (1976); Greensboro-High Point Airport Auth. v. Irvin, 306 N.C. 263, 293 S.E.2d 149 (1982); City Nat'l Bank v. Edmisten, 681 F.2d 942 (4th Cir. 1982); St. Paul Fire & Marine Ins. Co. v. Branch Banking & Trust Co., 643 F. Supp. 648 (E.D.N.C. 1986); Leggett v. Rose, 776 F. Supp. 229 (E.D.N.C. 1991); Jacobs v. Central Transp., Inc., 891 F. Supp. 1120 (E.D.N.C. 1995); Volumetrics Med. Imaging, Inc. v. ATL Ultrasound, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 11831 (M.D.N.C. July 10, 2003).

Cited in Gillespie v. DeWitt, 53 N.C. App. 252, 280 S.E.2d 736 (1981); Cochran v. City of Charlotte, 53 N.C. App. 390, 281 S.E.2d 179 (1981); Starr Elec. Co. v. Basic Constr. Co., 586 F. Supp. 964 (M.D.N.C. 1982); Fedoronko v. American Defender Life Ins. Co., 69 N.C. App. 655, 318 S.E.2d 244 (1984); Davidson & Jones, Inc. v. North Carolina Dep't of Admin., 69 N.C. App. 563, 317 S.E.2d 718 (1984); Mathews v. Board of Trustees, 96 N.C. App. 186, 385 S.E.2d 343 (1989); First Am. Bank v. Carley Capital Group, 99 N.C. App. 667, 394 S.E.2d 237 (1990); Borg-Warner Acceptance Corp. v. Johnston, 107 N.C. App. 174, 419 S.E.2d 195 (1992), cert. denied, 333 N.C. 254, 424 S.E.2d 918 (1993); Knight Publishing Co. v. Chase Manhattan Bank, 125 N.C. App. 1, 479 S.E.2d 478 (1997); House v. Stone, 163 N.C. App. 520, 594 S.E.2d 130, 2004 N.C. App. LEXIS 507 (2004); Arndt v. First Union Nat'l Bank, 170 N.C. App. 518, 613 S.E.2d 274, 2005 N.C. App. LEXIS 1080 (2005).

§ 24-1.1. Contract rates and fees.

(a) Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan or forbearance other than a credit card, open-end, or similar loan may contract in writing for the payment of interest not in excess of:

(1) Where the principal amount is twenty-five thousand dollars ($25,000) or less, the rate set under subsection (c) of this section; or

(2) Any rate agreed upon by the parties where the principal amount is more than twenty-five thousand dollars ($25,000).

(b) As used in this section, interest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance and is collected not more than 31 days in advance of its due date. Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds.

(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar month or (ii) the calendar month preceding that in which the rate is varied or adjusted.

(d) Any bank or savings institution organized under the law of North Carolina or of the United States may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00).

(e) Any bank or savings institution organized under the law of North Carolina or of the United States may charge a party to a loan or extension of credit not secured by real property governed by this section an origination fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars ($50.00).

(f) This section shall not be construed to limit fees on loans or extensions of credit in excess of three hundred thousand dollars ($300,000). (1969, c. 1303, s. 1; 1977, c. 778, ss. 1, 3; c. 779, s. 1; 1979, c. 138, s. 1; 1981, c. 465, s. 1; c. 934, s. 1; 1985, c. 663, s. 1; 1991, c. 506, s. 2; 1998-119, s. 1; 1999-75, s. 1.)

Cross References. — As to permissible late payment charges, see G.S. 24-10.

Legal Periodicals. — For survey of 1977 commercial law, see 56 N.C.L. Rev. 915 (1978).

For survey of 1981 commercial law, see 60 N.C.L. Rev. 1238 (1982).

For note, "Judicially Imposed Usury Penalties in the Absence of Statutory Penalties: Can Freedom of Contract Co-Exist with Public Policy After Merritt v. Knox?," see 68 N.C.L. Rev. 1021 (1990).

Legal Periodicals. - See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

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To establish that an agreement is usurious, it must be shown that (1) there was a loan, (2) there was an understanding that the money lent would be returned, (3) a greater rate of interest than that allowed by law was charged for the loan, and (4) there was corrupt intent to take more than the legal rate for the use of the money. Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, 319 N.C. 102, 353 S.E.2d 103 (1987).

Corrupt Intent. — The requirement of corrupt intent to take more than the legal rate for the use of money is simply the intentional charging of more for money lent than the law allows. Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, 319 N.C. 102, 353 S.E.2d 103 (1987).

Section 25-9-203 does not make an Article 9 transaction subject to this Section. Borg-Warner Acceptance Corp. v. Johnston, 107 N.C. App. 174, 419 S.E.2d 195 (1992), cert. denied, 333 N.C. 254, 424 S.E.2d 918 (1993).

Liability for Loan Servicer. — Loan servicing company that filed a claim on behalf of a mortgage company and that represented the company through an assignment of the original loan could not be liable for alleged usury because the loan servicing company was an agent of the assignee mortgage company and was not the holder of the note. Tetterton v. Ocwen Fed. Bank (In re Tetterton), 379 B.R. 594, 2007 Bankr. LEXIS 4190 (Bankr. E.D.N.C. 2007).

Interest Rate Held Usurious. — Where note was secured by a second deed of trust and the proceeds were to be used for development of the property, the loan was a "business property loan" as defined by the statute, and therefore, the twelve percent (12%) interest rate provided by the note was usurious. Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989), decided under prior law.

Where evidence against a check cashing business established that it executed contracts for usurious loans, it used its alternative business purpose of providing Internet access to consumers as a guise to cover this illegal activity, and no evidentiary basis existed upon which a reasonable fact-finder could reach a contrary conclusion, the State's claims of usury and violations of the Consumer Finance Act were established as a matter of law; moreover, the contracts which customers had with the business were cancelled pursuant to G.S. 75-15.1, requiring all funds collected by the business pursuant to such contracts to be refunded to the customers. State ex rel. Cooper v. NCCS Loans, Inc., 174 N.C. App. 630, 624 S.E.2d 371, 2005 N.C. App. LEXIS 2588 (2005).

Litigation Lending Agreement was Usurious. — Injured driver's loan agreement with a litigation lender was usurious under G.S. 24-1.1 since the driver's repayment obligations were ultimately subject to whether the recovery on the personal injury claim was sufficient to satisfy all or part of her debt to the lender, the agreement demonstrated the parties' understanding that the principal "shall be or may be" returned, the interest rate exceeded the permitted amount, and the lender intentionally entered into the contract to receive a greater amount of interest than that allowed by G.S. 24-1.1. Odell v. Legal Bucks, LLC, — N.C. App. —, 665 S.E.2d 767, 2008 N.C. App. LEXIS 1619 (2008).

Payment Plan In Excess of Value of Services Held Usurious. — Reorganized check cashing companies' policy of extending an immediate cash rebate and Internet usage to its customers in exchange for a one-year commitment to make bi-weekly payments in an amount equal to five times the amount of the rebate, violated G.S. § 24-2.1, was usurious, and constituted an unfair and deceptive trade practice in violation of G.S. 75-1.1. The fact that the reorganized companies characterized the transactions as rebates or Internet service agreements was subterfuge to conceal the usurious rate of interest. State ex rel. Cooper v. NCCS Loans, Inc., — N.C. App. —, 620 S.E.2d 697, 2005 N.C. App. LEXIS 2392 (2005).

Interest Rate in Violation of This Section Not Enforced. — Where interest due on the note was not subject to forfeiture, usurious twelve percent (12%) rate was not enforced; contract provisions in violation of a statute are contrary to public policy and will not be enforced. Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989).

A service charge taken for the creditor's forbearance from collecting on a portion of a debt owed to it is subject to the usury laws. Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

Forbearance Agreement Held Not Usurious. — A forbearance agreement secured by a second deed of trust and executed after the effective date of former subdivision (3) was not usurious in providing for interest of 9% per annum, notwithstanding the note to which the forbearance agreement related was executed prior to the effective date of that subdivision and at a time when the maximum rate of interest was 6%. Ausband v. Wachovia Bank & Trust Co., 17 N.C. App. 325, 194 S.E.2d 160, cert. denied, 283 N.C. 257, 195 S.E.2d 689 (1973).

Fraudulent Procurement of Money. — No implied contract resulted from a defendant's act of fraudulently obtaining the money from a plaintiff or from a court's order that the defendant pay restitution to the plaintiff, because there was no meeting of the minds between the parties. The law in effect at the time of an agreement determines the rate of interest on an obligation only where an agreement has actually been reached. Otherwise, the law in effect at the time of judgment determines the rate of interest. Speros Constr. Co. v. Musselwhite, 103 N.C. App. 510, 405 S.E.2d 785 (1991).

Amendment of Complaint. — Where plaintiff in its complaint sought interest in excess of the 12% allowed under this section, but presented evidence as to the amount of interest when calculated at 12%, the trial court did not abuse its discretion in granting an amendment to the pleadings so as to reduce the interest sought to that calculated at 12% per annum. Northwestern Bank v. Barber, 79 N.C. App. 425, 339 S.E.2d 452, cert. denied, 316 N.C. 733, 345 S.E.2d 391 (1986).

Applied in Western Auto Supply Co. v. Vick, 303 N.C. 30, 277 S.E.2d 360 (1981).

Cited in Equilease Corp. v. Belk Hotel Corp., 42 N.C. App. 436, 256 S.E.2d 836 (1979); Haanebrink v. Meyer, 47 N.C. App. 646, 267 S.E.2d 598 (1980); Pappas v. NCNB Nat'l Bank, 653 F. Supp. 699 (M.D.N.C. 1987); Pappas v. NCNB Nat'l Bank, 653 F. Supp. 699 (M.D.N.C. 1987); Hatcher v. Rose, 329 N.C. 626, 407 S.E.2d 172 (1991); West Raleigh Group v. Massachusetts Mut. Life Ins. Co., 809 F. Supp. 384 (E.D.N.C. 1992); Dash v. FirstPlus Home Loan Trust 1996-2, 248 F. Supp. 2d 489, 2003 U.S. Dist. LEXIS 3706 (M.D.N.C. 2003).

§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars ($10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

(2) Where the principal amount is less than ten thousand dollars ($10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation

wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

(3) Where the principal amount is less than ten thousand dollars ($10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

(a1) Subject to federal requirements, when a natural person applies for a home loan primarily for personal, family, or household purposes, the lender shall comply with the provisions of this subsection.

(1) Not later than the date of the home loan closing or three business days after the lender receives an application for a home loan, whichever is earlier, the lender shall deliver or mail to the applicant information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks. The Commissioner of Banks shall develop and make available to home loan lenders materials necessary to satisfy the provisions of this subsection.

(2) Not later than three business days after the home loan closing, the lender shall deliver or mail to the borrower an amortization schedule for the borrower's home loan. Provided, however, that a lender shall not be required to provide an amortization schedule unless the loan is a fixed rate home loan that requires the borrower to make regularly

scheduled periodic amortizing payments of principal and interest; and provided further that, with respect to a construction/permanent home loan, the amortization schedule must be provided only with respect to the permanent portion of the home loan during which amortization occurs.

(3) If the home loan transaction involves more than one natural person, the lender may deliver or mail the materials required by this subsection to any one or more of such persons.

(4) This subsection does not apply if the home loan applicant is not a natural person or if the home loan is for a purpose other than a personal, family, or household purpose.

(b) Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars ($150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

(c) If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:

(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Loan application, origination, commitment, and interest rate lock fees;

a1. Fees to administer a construction loan or a construction/permanent loan, including inspection fees and loan conversion fees;

b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;

c. Assumption fees to the extent permitted by G.S. 24-10(d);

d. Appraisal fees to the extent permitted by G.S. 24-10(h);

e. Fees and charges to the extent permitted by G.S. 24-8(d); and

f. Additional fees and charges, however individually or collectively denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars ($150.00).

(2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;

a1. Fees which do not exceed one quarter of one percent (1/4 of 1%) of the principal amount of the loan if the principal amount of the loan is less than one hundred fifty thousand dollars ($150,000), or one percent of the principal amount of the loan if the principal amount of the loan is one hundred fifty thousand dollars ($150,000) or more, for the conversion of a variable interest rate loan to a fixed interest rate loan, of a fixed interest rate loan to a variable interest rate loan, of a closed-end loan to an open-end loan, or of an open-ended loan to a closed-end loan;

b. Assumption fees to the extent permitted by G.S. 24-10(d);

c. Appraisal fees to the extent permitted by G.S. 24-10(h);

d. Fees and charges to the extent permitted by G.S. 24-8(d); and

e. If no fees are charged under subdivision (c)(2)b. of this section, additional fees and charges, however individually or collectively denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars ($150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loans or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars ($300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by subdivision (a)(1) or (2) of this section may contract to defer the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree that deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

(1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:
    a. The borrower is a natural person;
    b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and
    c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:
    a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
    b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars ($50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.
    c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.
    d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.
    e. A lender may charge a deferral fee under this subsection for deferring the payment of all or part of one or more regularly

scheduled payments, regardless of whether the deferral results in an extension of the loan maturity date or the date a balloon payment is due. A modification or extension of the loan maturity date or the date a balloon payment is due which is not incident to the deferral of a regularly scheduled payment shall be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan. (1973, c. 1119, ss. 1, 2; 1975, c. 260, s. 1; 1977, c. 542, ss. 1, 2; 1979, c. 362; 1983, c. 126, s. 4; 1985, c. 154, s. 1; c. 381, ss. 1, 2; 1987, c. 444, ss. 1, 3, 4; c. 853, s. 4; 1989, c. 17, ss. 13, 14; 1999-332, s. 1; 2000-140, ss. 40(a), 40(b); 2001-340, s. 1; 2001-413, s. 9; 2001-487, s. 56.)

Cross References. — As to permissible late payment charges, see G.S. 24-10. As to use of funds for a consumer counseling program and as to study on the implementation and enforcement of the provisions of Session Laws 1999-332, see the Editor's Note under G.S. 24-1.1E. As to priority of security instruments securing certain home loans, see G.S. 45-80.

Legal Periodicals. — For note on the operation of a due-on-sale clause in a deed of trust to allow a lender to exact higher interest rates from the grantee of a mortgagor, see 13 Wake Forest L. Rev. 490 (1977).

CASE NOTES

Subject Matter Jurisdiction. — District court had subject matter jurisdiction under 28 U.S.C.S. § 1334, over a borrower's claim that a securitization trustee, who held title to a mortgage loan given by a bankrupt lender to the borrower, violated North Carolina usury law and the Unfair and Deceptive Trade Practices Act; the borrower (1) was an obligor whose claim was barred by the clear terms of the stipulation and consent order of the bankruptcy court, (2) failed to successfully challenge the order in bankruptcy court, and (3) was thus bound by the order establishing that the case was related to the bankruptcy case for purposes of subject matter jurisdiction under 28 U.S.C.S. § 1334(b). Sowell v. U.S. Bank Trust Nat'l Ass'n, 317 B.R. 319, 2004 U.S. Dist. LEXIS 26521 (E.D.N.C. 2004).

Determining Principal Amount Financed. — The only reasonable interpretation of this statute is that the principal amount financed must be determined on a transaction-by-transaction basis, at least where the transactions are not contemporaneous, and not on the basis of the aggregate amount owing between the parties. Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

Prepayment Allowed Prior to Enactment of § 24-2.4. — Considering the acts of the General Assembly, specifically G.S. 24-10 and this section, the law of North Carolina prior to the enactment of G.S. 24-2.4 was that the mortgagor had the right of prepayment when the note was silent. Hatcher v. Rose, 329 N.C. 626, 407 S.E.2d 172 (1991).

Cited in Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991); West Raleigh Group v. Massachusetts Mut. Life

Ins. Co., 809 F. Supp. 384 (E.D.N.C. 1992); Ferguson v. Coffey, 180 N.C. App. 322, 637 S.E.2d 241, 2006 N.C. App. LEXIS 2325 (2006); Bumpers v. Cmty. Bank of N. Va., — N.C. App. —, 675 S.E.2d 697, 2009 N.C. App. LEXIS 516 (2009).

OPINIONS OF ATTORNEY GENERAL

As to the maximum rate of interest on a $50,000 loan secured by a first mortgage or first deed of trust on real property extending over less than ten years and repayable in installments, see the opinion of the Attorney General to Mr. Frank L. Harrelson, Commissioner of Banks, 40 N.C.A.G. 54 (1969), issued prior to subsequent amendments.

§ 24-1.1B: Repealed by Session Laws 1979, c. 335.

§ 24-1.1C: Repealed by Session Laws 1998-119, s. 2, effective October 1, 1998, and applicable to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

Legal Periodicals. — See legislative survey, 21 Campbell L. Rev. 323 (1999).

§ 24-1.1D: Expired.

Editor's Note. — This section was enacted by Session Laws 1981, c. 465, s. 2, and pursuant to s. 3 of that act, expired on July 1, 1983.

§ 24-1.1E. Restrictions and limitations on high-cost home loans.

(a) Definitions. — The following definitions apply for the purposes of this section:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

(2) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

(3) "Bona fide loan discount points" means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(4) A "high-cost home loan" means a loan other than a reverse mortgage transaction in which:

a. The principal amount of the loan (or, in the case of an open-end credit plan, the borrower's initial maximum credit limit) does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae, or (ii) three hundred thousand dollars ($300,000);

b. The borrower is a natural person;

c. The debt is incurred by the borrower primarily for personal, family, or household purposes;

d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.

(4a) "Mortgage broker" is as defined in G.S. 53-243.01.

(5) "Points and fees" is defined as provided in this subdivision.

a. The term includes all of the following:

1. All items paid by a borrower at or before closing and that are required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential.

2. All charges paid by a borrower at or before closing and that are for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".

3. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction.

4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

b. Notwithstanding the remaining provisions of this subdivision, the term does not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

c. For open-end credit plans, the term includes those points and fees described in sub-subdivisions a.1. through a.3. of this subdivision, plus (i) the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount, and (ii) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

(5a) A "table-funded transaction" is a loan transaction closed by a mortgage broker in the mortgage broker's own name with funds advanced by a person other than the mortgage broker in which the loan is assigned contemporaneously or within one business day of the funding of the loan to the person that advanced the funds.

(6) "Thresholds" means:

a. Without regard to whether the loan transaction is or may be a "residential mortgage transaction" (as the term "residential mortgage transaction" is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars ($1,000), if the total loan amount is less than twenty thousand dollars ($20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;
2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;
3. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing;

4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, 30 months after the date the borrower voluntarily exercises that right or option; or

c. If the loan is a closed-end loan, the loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid. If the loan is an open-end credit plan, the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, more than 30 months after the date the borrower voluntarily exercises that right or option, or (iii) which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

(7) For a closed-end loan, "total loan amount" has the same meaning as the term "total loan amount" as used in section 226.32 of Title 12 of the Code of Federal Regulations, and shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto. For an open-end credit plan, "total loan amount" means the borrower's initial maximum credit limit.

(b) Limitations. — A high-cost home loan shall be subject to the following limitations:

(1) No call provision. — No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(2) No balloon payment. — No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) No negative amortization. — No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

(4) No increased interest rate. — No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan

otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) No advance payments. — No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) No modification or deferral fees. — A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. — The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. — A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. — As used in this subsection, the term "obligor" refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. — In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

(4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. — A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

(5) Restrictions on home-improvement contracts. — A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the

election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(6) No shifting of liability. — A lender is prohibited from shifting any loss, liability, or claim of any kind to the closing agent or closing attorney for any violation of this section.

(d) Unfair and Deceptive Acts or Practices. — Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(e) Corrections and Unintentional Violations. — A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (b) or (c) of this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 30 days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) Severability. — The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees.

(g) A mortgage broker who brokers a high-cost home loan that violates any provisions of subsection (b) or (c) of this section shall be jointly and severally liable with the lender. (1999-332, s. 2; 2000-140, s. 40.1; 2001-487, s. 14(a); 2003-401, s. 3; 2007-352, ss. 1-3; 2008-227, s. 2; 2008-228, s. 15; 2009-457, s. 1.)

North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2007-323, ss. 22.1 (a)-(f) provide for continuation and expansion of the North Carolina Home Protection Pilot Program. See note at G.S. 122A-1.

For previous similar provisions, see Session Laws 2005-276, ss. 20.2(a)-(f).

Editor's Note. — Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Subsection (a), as rewritten by Session Laws 2003-401, s. 3, effective October 1, 2003, is applicable to contracts entered into or renewed on or after that date.

Effect of Amendments. — Session Laws 2007-352, s. 1, effective January 1, 2008, and applicable to consumer home loans entered into on or after that date, rewrote subdivision (a)(5)a.3.; and substituted "premiums for insurance against loss or damge to propery, including hazard" for "fire" near the end of subdivision (a)(5)b.

Session Laws 2007-352, ss. 2 and 3, effective January 1, 2008, added subdivisions (a)(4a) and (a)(5a), and added subsection (g).

Session Laws 2008-227, s. 2, effective October 1, 2008, substituted "fees, as defined in G.S. 24-1.1E(a)(5)" for "fees payable by the borrower at or before the loan closing" in subdivision (a)(6)b.

Session Laws 2008-228, s. 15, effective January 1, 2009, and applicable to anyone engaged in the business of mortgage servicing on or after that date, substituted "G.S. 53-243.01" for "G.S. 53-243.01(14)" in subdivision (a)(4a).

Session Laws 2009-457, s. 1, effective October 1, 2009, in subdivisions (a)(5)a1 and (a)(5)a2, inserted "paid by a borrower at or before closing and that are"; and in subdivision (a)(5)c, substituted "subdivision" for "subdivision that are charged at or before loan closing."

CASE NOTES

"High-Cost Home Loan." — Loan that the debtor had taken with the original creditor did not qualify as a high cost home loan, and the subsequent loan servicer was entitled to summary judgment as a matter of law because the debtor's closing costs did not amount to five percent of the total loan amount when the appraisal fees and attorneys' fees were excluded from the calculation. Tetterton v. Ocwen Fed. Bank (In re Tetterton), 379 B.R. 594, 2007 Bankr. LEXIS 4190 (Bankr. E.D.N.C. 2007).

§ 24-1.1F. Rate spread home loans.

(a) Definitions. — The following definitions apply for purposes of this section:

(1) Annual percentage rate. — The annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.) and the regulations promulgated thereunder by the Federal Reserve Board, as that Act and regulations are amended from time to time.

(2) Average prime offer rate. — An annual percentage rate published by the Federal Reserve Board and that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.

(3) Repealed by Session Laws 2009-457, s. 2, effective October 1, 2009.

(4) Mortgage broker. — A mortgage broker as defined in G.S. 53-243.01.

(5), (6) Repealed by Session Laws 2009-457, s. 2, effective October 1, 2009.

(7) Rate spread home loan. — A loan in which all the following apply:
- a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.
- b. The borrower is a natural person.
- c. The debt is incurred by the borrower primarily for personal, family, or household purposes.
- d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.
- e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.
- f. The loan's annual percentage rate exceeds each of the following:
  1. The average prime offer rate for a comparable transaction as of the date the interest rate for the loan is set by (i) one and one-half percentage points (1.5%) or more, if the loan is secured by a first lien mortgage or deed of trust or (ii) three and one-half percentage points (3.5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust.
  2. The conventional mortgage rate by (i) one and three-quarters percentage points (1.75%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three-quarters percentage points (3.75%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H. 15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.
  3. The yield on U.S. Treasury securities having comparable periods of maturity by (i) three percentage points (3%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act 12 U.S.C. § 2801, et seq. (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applica-

ble to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.

(b) No prepayment fees or penalties shall be charged or collected on a rate spread home loan.

(c) No lender shall make a rate spread home loan to a borrower based on the value of the borrower's collateral without due regard to the borrower's repayment ability as of consummation, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations. Without regard to whether the loan is a "higher-priced mortgage loan" as defined in section 226.35 of Title 12 of the Code of Federal Regulations, the methodology and standards for the determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of the Code of Federal Regulations and the related Federal Reserve Board's Official Staff Commentary on Regulation Z, as the regulation and commentary may be amended from time to time, shall be applied to determine a lender's compliance with this requirement.

(d) The making of a rate spread home loan which violates subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter. In addition, any prepayment penalty in violation of this section shall be unenforceable. However, a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.

(e) The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (ii) any other such subterfuge.

(f) A lender in a rate spread home loan who, when acting in good faith, fails to comply with this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 90 days of the loan closing and prior to the institution of any action against the lender under this section, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c), or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within 120 days after the discovery of the compliance failure and prior to the institution of any action against the lender under this section or the lender's receipt of written notice of the compliance failure, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c) of this section, or

(ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(g) The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. (2007-352, s. 4; 2008-228, s. 16; 2009-457, s. 2.)

Editor's Note. — Session Laws 2007-352, s. 10, made this section effective January 1, 2008.

Effect of Amendments. — Session Laws 2008-228, s. 16, effective January 1, 2009, and applicable to anyone engaged in the business of mortgage servicing on or after that date, substituted "G.S. 53-243.01" for "G.S. 53-243.01(14)" in subdivision (a)(4).

Session Laws 2009-457, s. 2, effective October 1, 2009, rewrote the section.

§ 24-1.2: Repealed by Session Laws 1998-119, s. 2, effective October 1, 1998, and applicable to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

§ 24-1.2A. Equity lines of credit.

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00). (1985, c. 207, s. 1; 1991, c. 506, s. 4; 1998-119, s. 2.1.)

§ 24-1.3: Repealed by Session Laws 1979, 2nd Session, c. 1302, s. 3.

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1302, s. 4, made the repeal effective retroactively to June 25, 1975.

§ 24-1.4. Interest rates for savings and loan associations.

(a) Notwithstanding any other provision of law, a savings and loan association domiciled in North Carolina may charge interest or collect fees with respect to any loan to the same extent as if the provisions of section 501 of

Public Laws 96-221, as interpreted by the Federal Home Loan Bank Board prior to the effective date of this section, were still in effect in North Carolina.

(b) Notwithstanding any other provision of law, any savings and loan association in North Carolina may contract for interest on any loan, purchase money loan, advance, commitment for a loan or forbearance at any rate permitted by federal law to a savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. (1981, c. 282, s. 3; 1983, c. 126, s. 6.)

§ 24-2. Penalty for usury; corporate bonds may be sold below par.

The taking, receiving, reserving or charging a greater rate of interest than permitted by this chapter or other applicable law, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid, may recover back twice the amount of interest paid in an action in the nature of action for debt. In any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it is lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest. If security has been given for an usurious loan and the debtor or other person having an interest in the security seeks relief against the enforcement of the security or seeks any other affirmative relief, the debtor or other person having an interest in the security shall not be required to pay or to offer to pay the principal plus legal interest as a condition to obtaining the relief sought but shall be entitled to the advantages provided in this section. Nothing contained in this section or in G.S. 24-1, however, shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof. (1876-7, c. 91; Code, s. 3836; 1895, c. 69; 1903, c. 154; Rev., s. 1951; C.S., s. 2306; 1955, c. 1196; 1959, c. 110; 1969, c. 1303, s. 3.)

Cross References. — As to limitation of actions to recover penalty and forfeiture of interest for usury, see G.S. 1-53. As to party seeking to recover on any usurious contract not being allowed costs, see G.S. 6-25. As to usurious loans on household and kitchen furniture or assignments of wages being made a misdemeanor, see G.S. 14-391. For the Consumer Finance Act, see G.S. 53-164 to 53-191. As to applicability of usury provisions to pawnbrokers, see G.S. 91A-8.

Legal Periodicals. — For note in reference to this section, see 12 N.C.L. Rev. 279 (1934).

For brief comment on the 1955 amendment, see 33 N.C.L. Rev. 537 (1955).

For comment on Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966), see 45 N.C.L. Rev. 899, 1151 (1967).

For comment on usury law in North Carolina, see 47 N.C.L. Rev. 761 (1969).

For comment on equity participation (a device to circumvent usury laws) in real estate finance, see 7 N.C. Cent. L.J. 387 (1976).

For note, "Judicially Imposed Usury Penalties in the Absence of Statutory Penalties: Can Freedom of Contract Co-Exist with Public Policy After Merritt v. Knox?," see 68 N.C.L. Rev. 1021 (1990).

For survey on usury law, see 70 N.C.L. Rev. 1983 (1992).

CASE NOTES

I. General Consideration.
II. Substance Controls Nature of Transaction.
  A. General Doctrine.
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III. Equitable Doctrines as Affecting Rights of Parties.
IV. Rights of Subsequent Purchasers.
V. Usury Laws as Affecting Corporations.
VI. Pleading and Practice.

I. GENERAL CONSIDERATION.

History. — For history of this section, see Commercial Credit Corp. v. Robeson Motors, Inc., 243 N.C. 326, 90 S.E.2d 886 (1956).

Allowing Interest Is Matter of Legislative Discretion. — At common law the taking of any interest was an indictable offense; hence, interest is now purely statutory, being chargeable in such cases and to such extent only as is expressly allowed by statute. The entire subject of the rate of interest and penalties for usury rests in legislative discretion, and the courts have no power other than to interpret and execute the legislative will. Smith v. Old Dominion Bldg. & Loan Ass'n, 119 N.C. 249, 26 S.E. 41 (1896).

Provisions Forbidding Usury and Declaring Forfeiture Are Clear. — The provisions of the law forbidding usury are very clear and explicit. No one can possibly misunderstand them. If, moved by avarice, a party deliberately violates this law, he has no ground to complain that his punishment has been in the very respect which caused him to sin, and that in grasping after illegitimate interest he has lost also the legitimate interest which the law would have given a law-abiding citizen. Moore v. Beaman, 111 N.C. 328, 16 S.E. 177-(1892).

They will be strictly construed. Dixon v. Smith, 204 N.C. 480, 168 S.E. 683 (1933); Argo Air, Inc. v. Scott, 18 N.C. App. 506, 197 S.E.2d 256 (1973).

This section was copied from the National Bank Act, and has gone into the laws of many states in exactly the same form. Pinnix v. Maryland Cas. Co., 214 N.C. 760, 200 S.E. 874 (1939).

The North Carolina penalties for usury were identical with those prescribed in the National Bank Act. Smith v. Old Dominion Bldg. & Loan Ass'n, 119 N.C. 249, 26 S.E. 41 (1896).

Purpose of Statute. — Both the former and the present statutes were enacted in restraint of excessive interest for the same general policy, and especially on the idea of protecting the borrower against the oppression of the lender, the chief difference being that a violation under the old statute invalidated the contract, working a forfeiture of the sum lent as well as of the interest, whereas the present law leaves the contract valid for the principal, but makes the interest forfeitable. Moore v. Woodward, 83 N.C. 531 (1880).

Statutes prohibiting charging usury or an illegal rate of interest are enacted for the benefit of the borrower. Ector v. Osborne, 179 N.C. 667, 103 S.E. 388 (1920).

The statute against usury is striking at, and forbidding, the extraction or reception of more than a specified legal rate for the hire of money, and not for anything else. Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966); State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976).

Duty of Courts to Carry Out Legislative Intent. — The forfeiture of the entire unpaid interest and recovery back of twice the interest paid is in the nature of a penalty intended to induce an observance of the statute, and it is the duty of the courts so to expound and apply the law as to carry out the legislative intent. Moore v. Woodward, 83 N.C. 531 (1880).

Enforceability of Unlawful Interest in Absence of Penalty. — Even in the absence of a penalty on charging usurious interest, such as contained in this section, a rate of interest above the one prescribed by law would not be enforceable. Hughes v. Boones, 102 N.C. 137, 9 S.E. 286 (1889).

Effect of Usury Formerly and Now. — By the former law, the taint of usury made the contract void both as to principal and interest into whose hands it might come, and so likewise any appearance, shift or device whereupon or whereby an illegal rate of interest was received or taken was declared to be void. By G.S. 24-1 six percent (now eight percent) is fixed as the legal rate of interest, and in case more than the rate allowed is taken, received, reserved, or charged, the contract is not invalidated as to the principal, but the entire interest carried by the note or other evidence of debt, or otherwise agreed to be paid thereon, is, under this section, forfeited; and in case such greater rate has been paid, a remedy is given to the party paying the same to recover by action of debt twice the amount of the interest paid. Moore v. Woodward, 83 N.C. 531 (1880).

The forfeiture provided by this section will be enforced against the usurer, when he seeks to recover upon the usurious contract or transaction. His debt will be stripped of all its interest-bearing quality, and he will be permitted to recover only the principal sum loaned. If a sum in excess of interest at the legal rate has not only been charged by the lender, but has also been paid by the borrower for the use of money, then the person, or his legal representative, or the corporation by whom the same has been paid, may recover twice the amount paid in an action in the nature of action for debt. Waters v. Garris, 188 N.C. 305, 124 S.E. 334 (1924); Sloan v. Piedmont Fire Ins. Co., 189 N.C. 690, 128 S.E. 2 (1925); Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927).

Under this section, usury does not invalidate a contract. It simply works a forfeiture of the entire interest, and subjects the lender to liability to the borrower for twice the amount of interest paid. Wilkins v. Commercial Fin. Co., 237 N.C. 396, 75 S.E.2d 118, rehearing denied, 238 N.C. 745, 76 S.E.2d 164 (1953).

A note otherwise valid is not rendered void either as to principal or interest by the taint of usury, but is subject only to the penalties and forfeitures of this section, one of which is the forfeiture of all interest when usury is properly pleaded and proven. Pinnix v. Maryland Cas. Co., 214 N.C. 760, 200 S.E. 874 (1939), overruling in this respect, Ward v. Sugg, 113 N.C. 489, 18 S.E. 695, 24 L.R.A. 280 (1893); Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927), approving Ector v. Osborne, 179 N.C. 667, 103 S.E. 388, 13 A.L.R. 1207 (1920).

A note executed and delivered as evidence of the promise of the maker to pay to the payee or his order a sum of money which has been loaned by the payee to the maker is not void, although the payee has knowingly taken, received, reserved, or charged interest on the note at a greater rate than six percent (now eight percent) per annum, which is the legal rate in this State; only the promise to pay interest is void in such case. Federal Reserve Bank v. Jones, 205 N.C. 648, 172 S.E. 185 (1934).

The charging of usurious interest strips the debt of all interest, and it simply becomes a loan which in law bears no interest. Hansen v. Jonas W. Kessing Co., 15 N.C. App. 554, 190 S.E.2d 407, cert. denied, 282 N.C. 151, 191 S.E.2d 601 (1972).

Effect of Repeal of Old Law. — A contract absolutely void under the old law for being usurious is not validated by the repeal of that law and the enactment of this section, which does not invalidate the principal of a usurious contract. Pond v. Horne, 65 N.C. 84 (1871).

Four Requisites of Usurious Transaction. — In order to constitute a usurious transaction, four requisites must appear: (1) There must be a loan, express or implied; (2) There must be an understanding between the parties that the money lent shall be returned; (3) For such loan a greater rate of interest than is allowed by law shall be paid or agreed to be paid, as the case may be; and (4) There must exist a corrupt intent to take more than the legal rate for the use of the money loaned. A profit greater than the lawful rate of interest, intentionally exacted as a bonus for the loan of money, imposed upon the necessities of the borrower in a transaction where the treaty is for a loan and the money is to be returned at all events is a violation of the usury laws, it matters not what form or disguise it may assume. Doster v. English, 152 N.C. 339, 67 S.E. 754 (1910), approved in Monk v. Goldstein, 172 N.C. 516, 90 S.E. 519 (1916); Loan & Trust Co. v. Yokley, 174 N.C. 573, 94 S.E. 102 (1917); Ector v. Osborne, 179 N.C. 667, 103 S.E. 388 (1920); Preyer v. Parker, 257 N.C. 440, 125 S.E.2d 916 (1962); Associated Stores, Inc. v. Industrial Loan & Inv. Co., 202 F. Supp. 251 (E.D.N.C. 1962), appeal dismissed, 313 F.2d 134 (4th Cir. 1963), cert. denied, 379 U.S. 830, 85 S. Ct. 60, 13 L. Ed. 2d 39 (1964), aff'd, 326 F.2d 756 (4th Cir. 1964).

To maintain an action for the usury penalty the claimant must show: (1) That there was a loan, express or implied, or a forbearance of money; (2) That there was an understanding between the parties that the money lent would be returned; (3) That for such loan or forbearance a greater rate of interest than is allowed by law was paid; and (4) That there was a corrupt intent to take more than the legal rate for the use of the money. Carolina Indus. Bank v. Merrimon, 260 N.C. 335, 132 S.E.2d 692 (1963); Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966); Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, 290 N.C. 502, 226 S.E.2d 321 (1976).

The elements of usury are these: (1) a loan or forbearance of money; (2) an understanding that the money loaned shall be returned; (3) payment or an agreement to pay a greater rate of interest than that allowed by law; and (4) a corrupt intent to take more than the legal rate for the use of the money loaned. Henderson v. Security Mtg. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968); Hodge v. First Atl. Corp., 10 N.C. App. 632, 179 S.E.2d 855, cert. denied, 278 N.C. 701, 181 S.E.2d 602 (1971); Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360 (1981), aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981); Swindell v. Overton, 80 N.C. App. 504, 342 S.E.2d 391 (1986).

Forbearance of Debt or Loan of Money Is Essential. — It is universally held that in order that a transaction shall fall within the prohibition of the statutes against usury it is essential that there should be a contract for the forbearance of an existing indebtedness or a loan of money. There is no exception to this universal rule, that there must be an extension of credit and an illegal compensation for it, knowingly taken, in order to constitute usury. This is recognized in the earliest cases on the subject up to the present time. Smithwick v. Whitley, 152 N.C. 366, 67 S.E. 914 (1910); Western Auto Supply Co. v. Vick, 303 N.C. 30, 277 S.E.2d 360, aff'd, 304 N.C. 191, 283 S.E.2d 101 (1981).

Usury can only attach to a loan of money or to forbearance of a debt. Carolina Indus. Bank v. Merrimon, 260 N.C. 335, 132 S.E.2d 692 (1963).

Forbearance Defined. — For the purpose of applying the law of usury to a given transaction in order to determine its applicability, the term "forbearance" means the contractual obligation of a lender or creditor to refrain for a given period of time from requiring the borrower or debtor to repay the loan or debt which is then due and payable. Western Auto Supply Co. v. Vick, 303 N.C. 30, 277 S.E.2d 360, aff'd, 304 N.C. 191, 283 S.E.2d 101 (1981).

Corrupt Intent Is Also Essential. — To constitute a usurious transaction, corrupt intent to take more than the legal rate of interest is an essential element. Bailey v. Inman, 224 N.C. 571, 31 S.E.2d 769 (1944).

The statutory penalty for charging usurious interest is imposed only when a corrupt intent exists to take more than the legal rate. Perry v. Doub, 249 N.C. 322, 106 S.E.2d 582 (1959).

That Is, Intentional Charging of More Than Lawful Rate. — The "corrupt intent" required to constitute usury is simply the intentional charging of more for money lent than the law allows. Associated Stores, Inc. v. Industrial Loan & Inv. Co., 202 F. Supp. 251 (E.D.N.C. 1962), appeal dismissed, 313 F.2d 134 (4th Cir. 1963), cert. denied, 379 U.S. 830, 85 S. Ct. 60, 13 L. Ed. 2d 39 (1964), aff'd, 326 F.2d 756 (4th Cir. 1964); Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981); Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, 295 N.C. 549, 248 S.E.2d 728 (1978).

The statutory penalty for charging usury is the forfeiture of all interest on the loan. The charging of usurious interest as provided for by a partnership agreement is sufficient to cause a forfeiture of all the interest charged. The charging of such usurious interest strips the debt of all interest. It becomes simply a loan which in law bears no interest. Any payments of interest which have been made at a legal rate are by law applied to the only legal indebtedness — the principal sum. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971); Argo Air, Inc. v. Scott, 18 N.C. App. 506, 197 S.E.2d 256 (1973).

Should the court determine that the transaction was usurious, the court will (1) eliminate the indebtedness of all interest charged, (2) determine the amount of interest paid, and (3) give plaintiff credit on the indebtedness for twice the amount of interest paid. Argo Air, Inc. v. Scott, 18 N.C. App. 506, 197 S.E.2d 256 (1973).

The corrupt intent required to constitute usury is simply the intentional charging of more for money lent than the law allows. Where the lender intentionally charges the borrower a greater rate of interest than the law allows and his purpose is clearly revealed on the face of the instrument, a corrupt intent to violate the usury law on the part of the lender is shown. And where there is no dispute as to the facts, the court may declare a transaction usurious as a matter of law. Swindell v. Overton, 80 N.C. App. 504, 342 S.E.2d 391 (1986).

The corrupt intention which is required is not that the offender intended to violate the usury laws. The intent which is required is merely the intention to take the interest which is called for in the loan or forbearance agreement. In the event that the interest agreed upon exceeds that allowed by law under the particular circumstances of the case, the requisite usurious intention exists. Swindell v. Overton, 80 N.C. App. 504, 342 S.E.2d 391 (1986).

Applicability To Check Cashing Business That Charged Usurious Interest Rates. — Where evidence against a check cashing business established that it executed contracts for usurious loans, it used its alternative business purpose of providing Internet access to consumers as a guise to cover this illegal activity, and no evidentiary basis existed upon which a reasonable fact-finder could reach a contrary conclusion, the State's claims of usury and violations of the Consumer Finance Act were established as a matter of law; moreover, the contracts which customers had with the business were cancelled pursuant to G.S. 75-15.1, requiring all funds collected by the business pursuant to such contracts to be refunded to the customers. State ex rel. Cooper v. NCCS Loans, Inc., 174 N.C. App. 630, 624 S.E.2d 371, 2005 N.C. App. LEXIS 2588 (2005).

Evidence of a lender's good intentions is not relevant to the issue of "corrupt intent." Rather, corrupt intent is present where the interest agreed upon exceeds that allowed by law. Swindell v. Overton, 80 N.C. App. 504, 342 S.E.2d 391 (1986).

Which in Itself Shows Corrupt Intent. — Where the lender of money intentionally charges the borrower a greater rate of interest than the law allows, and his purpose stands clearly revealed on the face of the instrument, a corrupt intent to violate the usury law on the part of the lender is shown. Riley v. Sears, 154 N.C. 509, 70 S.E. 997 (1911).

But Contract Must Have Been Executed in Bad Faith. — To constitute an intent to circumvent the usury laws, the contract must have been executed in bad faith, such "bad faith" meaning that the transaction involved was dishonestly conceived and consummated with knowledge of a fraudulent design or deception. Clarkson v. Finance Co. of Am., 328 F.2d 404 (4th Cir. 1964).

Penalties for Charging and Collecting Usurious Rate of Interest. — Where a usurious rate of interest on money has been paid by the borrower of money, the statutory penalty is double the amount of the usury, but where it is only charged, and not collected, the statute eliminates the usury and forfeits the interest on the amount of the loan. Ragan v. Stephens, 178 N.C. 101, 100 S.E. 196 (1919).

Amount of Recovery. — Under the clear terms of this section the plaintiff is entitled to recover back double the entire interest paid, not merely double the usurious excess. Tayloe v. Parker, 137 N.C. 418, 49 S.E. 921 (1905).

Even Where Plaintiff Is in Pari Delicto. — A borrower who has paid usurious interest may under this section recover of the lender twice the amount of usurious interest so paid, notwithstanding that he is in pari delicto in the transaction. Hollowell v. Southern Bldg. & Loan Ass'n, 120 N.C. 286, 26 S.E. 781 (1897).

But Payment Is Necessary for Recovery. — Before the plaintiff can maintain the action he must pay the usury in money or money's worth. It is well settled that the penalty is not incurred by the charging of usurious interest; it is by taking the usury that the party incurs the penalty, and no action lies therefor until it is paid. Stedman v. Bland, 26 N.C. 296 (1844); Godfrey v. Leigh, 28 N.C. 390 (1846); Rushing v. Bivens, 132 N.C. 273, 43 S.E. 798 (1903).

Usurious interest must first be paid before any recovery may be had by the borrower. Steed v. First Union Nat'l Bank, 58 N.C. App. 189, 293 S.E.2d 217, cert. denied, 306 N.C. 751, 295 S.E.2d 763 (1982).

To be entitled to recover this penalty for usury, plaintiff must have been charged usurious interest and must have actually paid the usurious interest. Adams v. Beard Dev. Corp., 116 N.C. App. 105, 446 S.E.2d 862 (1994).

And a renewal of the note does not constitute such payment of the original debt. Ragan v. Stephens, 178 N.C. 101, 100 S.E. 196 (1919).

Double Damages Proper. — Plaintiff was properly awarded $1,700 in damages for usury, and was entitled to have the damages doubled pursuant to this section. Britt v. Jones, 123 N.C. App. 108, 472 S.E.2d 199 (1996).

Double Recovery Not Allowed If Actual Interest Paid Was Not Usurious. — Where a greater rate of interest than allowed by law was charged by means of a partnership agreement required, but no profit inured to the defendant under this agreement, and the only interest actually paid by plaintiff company was the 8% provided for in the note, this in itself was a legal rate so no usurious interest had been paid, and plaintiff company was not entitled to recover double the amount of the interest. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

Only where a usurious rate of interest has been paid by the borrower, rather than merely charged by the lender, may the borrower recover double the interest. If a usurious interest rate has been charged but not actually paid, the penalty is forfeiture of the entire interest paid; the borrower is not allowed to recover double the interest. Swindell v. Overton, 80 N.C. App. 504, 342 S.E.2d 391 (1986).

Recovery Cannot Be Had on Allegation of Overpayment by Mistake. — In an action to recover for overpayment of interest, made by mistake, recovery cannot be had for the forfeiture of double the interest as a penalty for usury, since, upon the allegation of such overpayment by mistake, no legal implications arise that the plaintiff is suing for the forfeiture. Gillam v. Life Ins. Co., 121 N.C. 369, 28 S.E. 470 (1897).

Intentional Charging Forfeits Entire Interest. — This section makes the "taking, receiving, reserving or charging usury," when knowingly done, i.e., intentionally done, and not by a mere error of calculation, a forfeiture (not merely forfeitable) of the entire interest which the note carries with it, or which has been agreed to be paid thereon. Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

All interest is forfeited when usury is knowingly exacted. Guaranty Bond & Mtg. Co. v. Fair Promise A.M.E. Zion Church, 219 N.C. 395, 14 S.E.2d 37 (1941); Haanebrink v. Meyer, 47 N.C. App. 646, 267 S.E.2d 598 (1980).

But Mere Entry Does Not Constitute Charging. — The mere entry on account and subsequent presentation of a usurious claim is not a "charging" within the meaning of this section. Grant v. Morris & Sons, 81 N.C. 150 (1879).

The charging which constitutes a forfeiture is the contract, promise or agreement to a usurious rate of interest as opposed to the actual payment of that interest. Haanebrink v. Meyer, 47 N.C. App. 646, 267 S.E.2d 598 (1980); Northwestern Bank v. Barber, 79 N.C. App. 425, 339 S.E.2d 452 (1986); Adams v. Beard Dev. Corp., 116 N.C. App. 105, 446 S.E.2d 862 (1994).

Junior Lienor Has Same Rights as Mortgagor as to Senior Debt. — A junior mortgagee enjoining the sale under a senior lien is entitled to have the senior debt stripped of usury and the amount of the debt ascertained at the amount advanced plus interest thereon at the legal rate of six percent (now eight percent), this being the relief to which the mortgagor would be entitled, and equity requiring that the same rule should be applicable to the junior lienor. Pinnix v. Maryland Cas. Co., 214 N.C. 760, 200 S.E. 874 (1939).

Creditor May Not Evade Statute by Assigning His Debt. — Where defendants had a right to plead usurious payments as a setoff or defense to any action brought by the original creditor, the creditor could not evade the express language of this section by assigning his debt to a third person. Overton v. Tarkington, 249 N.C. 340, 106 S.E.2d 717 (1959).

Insurance Companies Are Subject to Penalties. — An insurance company which charges, retains, or receives interest on a loan made by it in this State, to a policyholder or other person, at a rate in excess of six per centum (now eight percent) per annum is subject to the penalties prescribed by this section notwithstanding the provisions of G.S. 58-32 as to the premiums paid on policies. Cowan v. Security Life & Trust Co., 211 N.C. 18, 188 S.E. 812 (1936).

Two remedies are provided for the enforcement of the penalties authorized by this section: First. Where a greater rate of interest than six per centum (now eight percent) per annum has been paid, the person or his legal representatives or the corporation by whom it has been paid, may recover back twice the amount of interest paid, in an action at law in the nature of an action for debt. Second. In any action brought by the creditor to recover upon any usurious note or other evidence of debt affected with usury, it is lawful for the party against whom the action is brought to plead as a counterclaim or setoff, the penalties provided by the statute, to-wit, twice the amount of interest paid, and also the forfeiture of the entire interest charged. Waters v. Garris, 188 N.C. 305, 124 S.E. 334 (1924); Overton v. Tarkington, 249 N.C. 340, 106 S.E.2d 717 (1959).

The borrower may waive his rights under this section. Ector v. Osborne, 179 N.C. 667, 103 S.E. 388 (1920).

By consent judgment entered in an action upon a note, wherein usury is set up by the defendant, and the parties have agreed upon a compromise in a certain sum, signed and entered by the court, the defendant waives his right under the usury law, and may not thereafter maintain the defense that a note he had given the plaintiff, in the amount of the judgment, was tainted with the usury of the first transaction. Ector v. Osborne, 179 N.C. 667, 103 S.E. 388 (1920).

New Note Must Be in the Nature of a Compromise in Order to Constitute a Waiver of Right to Plead Usury. — A usurious contract is not purged of the usury by the execution of renewals or by a change in the form of the contract, or by the giving of a separate note for the usurious charge, and in order for an agreement as to the total debt and the execution of a new note therefor to constitute a waiver of the right to plead usury, the new amount arrived at must be agreed to by the debtor as just and due the creditor, taking into consideration his claim of usury, and be in the nature of a compromise and settlement and be a novation rather than a renewal. Hill v. Lindsay, 210 N.C. 694, 188 S.E. 406 (1936).

Thus, where it was found that the parties agreed upon the total amount of the debt after an accounting involving the credit of sums obtained from the sale of collateral given for the debt, but not involving the question of usury, and that the debtor executed a new note for the balance thus arrived at, it was held insufficient to support the court's conclusion of law that the debtor waived the right to claim usury, the transaction being a renewal rather than a novation. Hill v. Lindsay, 210 N.C. 694, 188 S.E. 406 (1936).

A renewal of the original obligations does not constitute a settlement of the plaintiff's right to invoke the statutory remedy for usury so as to purge the renewal contract of the taint. Henderson v. Security Mfg. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968).

Usurious Interest on Other Bonds Is Defense to Suit on Chattel Mortgage Securing Such Interest. — In an action of claim and delivery for certain property conveyed by a chattel mortgage, the defendant can set up the defense of usury upon the allegation that the sole consideration of the bond secured by the mortgage was usurious interest, which had accrued upon certain other bonds executed by the defendant to the plaintiff. Moore v. Woodward, 83 N.C. 531 (1880).

Brokerage Commission for Usurious Loan Not Prohibited. — The conduct condemned by the usury statutes is the extraction or reception of more than a specified legal rate for the hire of money, and not for anything else and brokerage commissions may be recovered for negotiating a usurious loan. Hansen v. Jonas W. Kessing Co., 15 N.C. App. 554, 190 S.E.2d 407, cert. denied, 282 N.C. 151, 191 S.E.2d 601 (1972).

Defendant cannot avoid payment for brokerage services simply because the defendant and the lender chose to enter into an agreement which was in violation of the North Carolina usury statutes. There is nothing in this record to show that the plaintiff did more than bring the borrower and the lender together. He did not make the loan or negotiate its terms. Hansen v. Jonas W. Kessing Co., 15 N.C. App. 554, 190 S.E.2d 407, cert. denied, 282 N.C. 151, 191 S.E.2d 601 (1972).

Time Limitation on Forfeiture of Interest for Usury. — There shall be no forfeiture of interest for usury after the expiration of two years from the date of forfeiture under the provisions of this section. Haanebrink v. Meyer, 47 N.C. App. 646, 267 S.E.2d 598 (1980).

Late Payment Fees Are "Interest". — The General Assembly, which specified a maximum legal rate for late payment fees in G.S. 24-10.1, considered such fees "interest" and intended to induce observance of that law through the penalty provisions of this section. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

Penalty fees for late payments are "interest" and are compensation for the detention of money owed another, and all such compensation must be forfeited when its rate is usurious, as defined by the laws of this state. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

This Section Applicable to Enforce Violations of § 24-10.1. — The statutory penalty for usury requires a defendant which has charged late payments in excess of the legal maximum rate permitted by former G.S. 24-10(e) (see now G.S. 24-10.1) to forfeit all late payment charges to which it might otherwise have been entitled under the terms of the loan, but defendant is not required to forfeit the interest due on the loan itself. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

Applied in White v. Disher, 232 N.C. 260, 59 S.E.2d 798 (1950); Perry v. Doub, 238 N.C. 233, 77 S.E.2d 711 (1953); Auto Fin. Co. v. Simmons, 247 N.C. 724, 102 S.E.2d 119 (1958); Harrington v. Tucker, 261 N.C. 372, 134 S.E.2d 625 (1964); Lexington State Bank v. Suburban Printing Co., 7 N.C. App. 359, 172 S.E.2d 274 (1970); River Dev. Corp. v. Parker Tree Farms, Inc., 12 N.C. App. 1, 182 S.E.2d 211 (1971); Redic v. Gary H. Watts Realty Co., 762 F.2d 1181 (4th Cir. 1985).

Cited in Bundy v. Commercial Credit Co., 198 N.C. 339, 151 S.E. 626 (1930); McNeill v. Suggs, 199 N.C. 477, 154 S.E. 729 (1930); Pugh v. Scarboro, 200 N.C. 59, 156 S.E. 149 (1930); Fletcher v. Parlier, 206 N.C. 904, 206 N.C. 907, 173 S.E. 343, 173 S.E. 343 (1934); Flythe v. Wilson, 227 N.C. 230, 41 S.E.2d 751 (1947); Anderson v. Pamlico Chem. Co., 470 F. Supp. 12 (E.D.N.C. 1977); Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989); Borg-Warner Acceptance Corp. v. Johnston, 107 N.C. App. 174, 419 S.E.2d 195 (1992).

II. SUBSTANCE CONTROLS NATURE OF TRANSACTION.

A. General Doctrine.

Form of Transaction Cannot Conceal Its Usurious Nature. — An express or implied loan, upon the understanding that the money shall be returned at a greater interest rate than the statute allows, whatever the form of the transaction, and with corrupt intent on the part of the lender, is usury under this section, the corrupt intent consisting in "taking, receiving, reserving, or charging" a greater rate than that allowed by law. Swamp Loan & Trust Co. v. Yokley, 174 N.C. 573, 94 S.E. 102 (1917).

Where a transaction is in reality a loan of money, whatever may be its form, and the lender charges for the use of his money a sum in excess of interest at the legal rate, by whatever name the charge may be called, the transaction will be held to be usurious. The law considers the substance and not the mere form or outward appearance of the transaction in order to determine what it in reality is. If this were not so, the usury laws of the State would easily be evaded by lenders of money who would exact from borrowers with impunity compensation for money loaned in excess of interest at the legal rate. Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927).

Where there is negotiation for a loan of money, and the borrower agrees to return the amount advanced at all events, it is a contract of lending; and however the transaction may be shaped or disguised, if a profit or return beyond the legal rate of interest is intended to be made out of the necessities or improvidence of the borrower, or otherwise, the contract is usurious. MacRackan v. Bank of Columbus, 164 N.C. 24, 80 S.E. 184 (1913); Swamp Loan & Trust Co. v. Yokley, 174 N.C. 573, 94 S.E. 102 (1917).

The nature and terms of the contract determine its character and purpose, and if usurious in itself it must be so understood to have been intended by the parties, and they cannot be heard to the contrary. So the parties to a contract usurious upon its face, understandingly entered into, must be deemed to have intended to provide for the payment of a rate of interest in excess of that allowed by law, and that is itself a usurious contract. Burwell v. Burgwyn, 100 N.C. 389, 6 S.E. 409 (1888).

The courts do not hesitate to look beneath the forms of transactions alleged to be usurious in order to determine whether or not such transactions are in truth and in realty usurious. Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927); Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

The vitality of the usury statutes would not be maintained by allowing creditors to charge unlawful interest rates merely by disguising the form of their transactions; the court must be concerned with substance and not form. Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

In construing a transaction with regard to the usury statutes the court will look to its substance and not to its form. Pratt v. American Bond & Mtg. Co., 196 N.C. 294, 145 S.E. 396 (1928).

And if transaction is a subterfuge it will be treated accordingly. — If in fact the transaction is a bona fide sale and not a loan of money, it is not usurious. But if the form of the transaction is a subterfuge to conceal an exaction of more than the legal rate of interest on what is in fact a loan and not a sale, the transaction will be regarded according to its true character and will be held usurious. Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966).

B. Specific Instances.

Where a bank followed an arrangement made by its depositor that the latter keep a certain percent of the money borrowed upon his own paper and paper of its customers upon which he remained responsible, and which was good and collectible by the bank without trouble to it, and thus collected on the series of transactions a rate of interest in excess of the legal rate, the interest thus received was usurious and comes within the intent and meaning of the statute forbidding it. English Lumber Co. v. Wachovia Bank & Trust Co., 179 N.C. 211, 102 S.E. 205 (1920).

Where a building and loan association charged a stockholder certain fines under former § 54-15, such fines could not be alleged as interest paid on the loan from the corporation. Moore v. Mutual Bldg. & Loan Ass'n, 203 N.C. 592, 166 S.E. 597 (1932).

Where a borrower executed notes for the principal sum borrowed and notes for the interest on the principal notes from the time of their execution until their respective maturities, and the lender paid the borrower the principal sum borrowed less an amount deducted and retained by the lender, in the absence of an agreed fact or a finding by the court that the sum deducted was reserved by the lender as interest, the transaction did not constitute usury, and therefore the notes were not tainted with usury in the hands of a purchaser. Ray v. Atlantic Life Ins. Co., 207 N.C. 654, 178 S.E. 89 (1935).

Any charges made by a building and loan association against a borrowing member, in excess of the legal rate of interest, whether such charges are called "fines," "dues" or "interest," are usurious. Hollowell v. Southern Bldg. & Loan Ass'n, 120 N.C. 286, 26 S.E. 781 (1897).

Stipulation That Laws of Another State Should Apply. — Where the court finds that the stipulation in a contract that the laws of another state should apply was made in bad faith for the purpose of evading the usury laws of this State, and that defendant charged and received payment of usurious interest, the findings are sufficient to support a judgment in plaintiff's favor that he recover of defendant twice the amount of usurious interest paid as determined by this section. Polikoff v. Finance Serv. Co., 205 N.C. 631, 172 S.E. 356 (1934).

The Maryland usury statute was controlling in determining whether a loan agreement between a North Carolina corporation and a Maryland finance corporation was usurious where the agreement was first executed in this State and then mailed to the Maryland office of the finance corporation for signing and where the agreement's direction that the entire transaction be measured upon the laws of Maryland was in no degree illegal, opposed to public policy, or offensive to the good morals of either state. Clarkson v. Finance Co. of Am., 328 F.2d 404 (4th Cir. 1964).

Usury in Fact Made Payable in This State. — Where in fact a contract for the payment of usurious interest, in violation of G.S. 24-1 et seq., was made payable in this State, the fact that it appeared from the face of the contract that it was payable in another state did not relieve it of its usurious charge of interest contrary to the statute of this State. Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927).

Sum Paid to Trust Company Held to Be a Reasonable Brokerage Fee. — Two thousand six hundred dollars paid to a trust company for its services in handling ninety $1,000 bonds bearing interest at the legal rate was held not to constitute usury, but a reasonable brokerage fee. McCubbins v. Virginia Trust Co., 80 F.2d 984 (4th Cir. 1936).

Bonus. — A profit, greater than the lawful rate of interest, intentionally exacted as a bonus for the loan of money, is a violation of the usury laws; it matters not what form or disguise it may assume. Henderson v. Security Mtg. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968).

A profit, greater than the lawful rate of interest, intentionally exacted as a bonus for the loan of money, imposed upon the necessities of the borrower in a transaction where the treaty is for a loan and the money is to be returned at all events, is a violation of the usury laws; it matters not what form or disguise it may assume. Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

Commission. — If the lender charges a commission in addition to the maximum rate of interest permitted by the statute, such charge is usury. Henderson v. Security Mtg. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968).

Fee for Finding Lender. — One who makes no loan but, as broker or agent of the borrower, finds a lender and procures the making of a loan by him, has not received usury when he collects a fee for his services. Henderson v. Security Mtg. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968).

A bona fide credit sale upon an installment payment basis does not involve a loan of money or a forbearance of a debt within the meaning and application of the usury laws. Carolina Indus. Bank v. Merrimon, 260 N.C. 335, 132 S.E.2d 692 (1963); Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966).

If there is a real and bona fide purchase, not made as the occasion or pretext for a loan, the transaction will not be usurious even though the sale be for an exorbitant price, and a note is taken, at legal rates, for the unpaid purchase money. Carolina Indus. Bank v. Merrimon, 260 N.C. 335, 132 S.E.2d 692 (1963); Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966); State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976); Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

There is no statute regulating time prices in general retail credit sales payable in installments. Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966).

A purchaser is not, like the needy borrower, a victim of a rapacious lender, since he can refrain from the purchase if he does not choose to pay the price asked by the seller. Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966); State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976).

Usury cannot be predicated upon the fact that property is sold on credit at an advance over what would be charged in case of a cash sale so long as it appears that the price charged is in fact fixed for the purchase of goods on credit with no intention or purpose of defeating the usury laws, even though the difference between the cash price and the credit price, if considered as interest, amounts to more than the legal rate. Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966).

A vendor may fix on his property one price for cash and another for credit, and the mere fact that the credit price exceeds the cash price by a greater percentage than is permitted by the usury laws is a matter of concern to the parties and not to the courts, barring evidence of bad faith. Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 151 S.E.2d 579 (1966); State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976).

The sale of merchandise is not usurious when the sale is made for one price if cash is paid and for a higher price if payment is deferred or made in future installments, so long as the transaction is not a subterfuge to conceal a usurious loan. State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976).

If there is a bona fide purchase of property as opposed to a subterfuge to conceal a loan at a usurious rate, then the usury laws have no application whatsoever, even though the sale is made at an exorbitant price. The reason for the recognition of the time-price doctrine is manifest: The usury laws are directed at the extraction of more than the legal rate of interest for the use of money, and a purchaser can refrain from paying the price asked by the seller if he so chooses. Western Auto Supply Co. v. Vick, 303 N.C. 30, 277 S.E.2d 360, aff'd, 304 N.C. 191, 283 S.E.2d 101 (1981).

Conditional Sale. — An action to recover alleged usurious interest paid cannot be maintained upon evidence disclosing that the transaction alleged was not a loan but was a sale with deferred payment secured by conditional sale contract. Hendrix v. Harry's Cadillac Co., 220 N.C. 84, 16 S.E.2d 456 (1941).

Loan by Finance Corporation for Purchase of Automobiles. — Where a finance corporation loaned money for the purchase of automobiles sold in this State to be paid for at a greater rate of interest than six percent (now eight percent) the transaction was a usurious one coming within the inhibition of the usury statute and the penalty it imposed, though the contract was couched in the language of bargain and sale in order to evade the usury law. Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927).

Charge for Forbearance in Collection of Debt at End of Payment Period. — The two percent per month service charge sought to be imposed by plaintiff did not constitute a "time price" but was a charge for plaintiff's forbearance in the collection of the debt at the end of the payment period; as such, the two percent per month service charge was interest and usurious. State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976).

Requiring Endorsement of Seller as Guaranty of Payment. — It has been repeatedly held in this State that while one may buy a note from another, at any price that may be agreed upon, the bargain being free from fraud or unlawful imposition, if the purchaser requires the endorsement of the seller as a guaranty of payment, the transaction, as between the immediate parties thereto, is in effect a loan, and will be so considered, within the meaning and purport of the laws against usury. Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

Where a usurious note called for level monthly payments and the note provided that each payment was to be applied to principal and interest, defendant was entitled to recover twice the amount of interest paid. Equilease Corp. v. Belk Hotel Corp., 42 N.C. App. 436, 256 S.E.2d 836, cert. denied, 298 N.C. 568, 261 S.E.2d 121 (1979).

Documents Not Stating Interest Rate. — Promissory note, deed of trust and sales contract showing a face amount of $9,645.12, payable in 144 equal monthly installments, but not stating the specific interest rate charged, which interest was added to the amount of the note in advance, did not entitle defendants, who allegedly loaned plaintiffs only $5,600.00 and charged an illegal 10% thereon, to a directed verdict or judgment n.o.v. DeHart v. R/S Fin. Corp., 78 N.C. App. 93, 337 S.E.2d 94 (1985), cert. denied, 316 N.C. 376, 342 S.E.2d 893 (1986).

III. EQUITABLE DOCTRINES AS AFFECTING RIGHTS OF PARTIES.

History. — Prior to the 1959 amendment to this section, it was held that in equity, while a usurious lender could have no relief whatever, neither could a borrower have relief against such a lender, such as enjoining the enforcement of a mortgage, without repaying the principal *plus* lawful interest. The basis of this principle was the equitable maxim, "He who seeks equity must do equity." See McBrayer v. Roberts, 17 N.C. 75 (1831); Cook v. Patterson, 103 N.C. 127, 9 S.E. 402 (1889); Waters v. Garris, 188 N.C. 305, 124 S.E. 334 (1924); Miller v. Dunn, 188 N.C. 397, 124 S.E. 746 (1924); Jonas v. Home Mtg. Co., 205 N.C. 89, 170 S.E. 127 (1933); North Carolina Mtg. Corp. v. Wilson, 205 N.C. 493, 171 S.E. 783 (1933); Pinnix v. Maryland Cas. Co., 214 N.C. 760, 200 S.E. 874 (1939). However, it was held that such principle did not apply to a proceeding by a debtor at law for the statutory penalty. See Cheek v. Iron Belt Bldg. & Loan Ass'n, 127 N.C. 121, 37 S.E. 150 (1900); Currituck Grain, Inc. v. Powell, 28 N.C. App. 563, 222 S.E.2d 1 (1976). And there had been some criticism of cases applying the doctrine. See Currituck Grain, Inc. v. Powell, 28 N.C. App. 563, 222 S.E.2d 1 (1976).

Where the payee withholds from the borrower a part of the face amount of the note, the same being a device to evade the usury laws, the borrower is entitled in equity to have the note credited with the amount so withheld upon the maturity of the note as against the payee under this section. Federal Reserve Bank v. Jones, 205 N.C. 648, 172 S.E. 185 (1934).

IV. RIGHTS OF SUBSEQUENT PURCHASERS.

Holder in Due Course Occupies No Better Position than Lender. — As to usurious contracts, the law regards the maker, not as in pari delicto, but as acting "in chains," and to permit his contract, which is deemed exacted under duress, to come under the general rule in favor of innocent holders for value of commercial paper, would be to nullify the protecting statute. The recourse of the holder is against the payee and indorser, who is more likely by far to be able to respond than the maker. Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

Prior to this section, a usurious contract worked a forfeiture of both the interest and the debt, and it was stated in Coor v. Spicer, 65 N.C. 401 (1871), that under the operation of such a statute, innocent and meritorious holders were obliged to suffer. Faison v. Grandy & Sons, 126 N.C. 827, 36 S.E. 276 (1900), rehearing allowed, Varnell v. Henry M. Milgrom, Inc., 78 N.C. App. 451, 337 S.E.2d 616 (1985).

A note tainted with usury retains the taint in the hands of a subsequent holder. The forfeiture of interest is the decree of the law. Faison v. Grandy & Sons, 126 N.C. 827, 36 S.E. 276 (1900), rehearing allowed, 128 N.C. 438, 38 S.E. 897 (1901).

Notes vitiated by an usurious or gaming consideration cannot be enforced in the most innocent hands, but are always and under all circumstances void. Glenn v. Farmer's Bank, 70 N.C. 191 (1874); Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

Contrary Rule Would Render Usury Statute Nugatory. — If, by passing the note off before maturity and for value, the indorsee may recover on it, the statute is useless, as the protection intended and the penalty and prohibition are alike rendered nugatory. The victim would have no recourse but to suffer in silence. The usury would be collected in spite of the law which had declared the "entire interest forfeited" ab initio, by the fact of "charging or reserving" it. On the other hand, the innocent indorsee has his recourse against the payee who has indorsed the note to him, a recourse which would more surely protect him, being against the party who has money to loan, not to borrow. Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

Rule Applies to Obligations Secured by Mortgages. — The only case that seems to mitigate against the otherwise uniform tenor of the decisions on this subject is Coor v. Spicer, 65 N.C. 401 (1871), which holds that a mortgage given to secure a usurious bond might be enforced in the hands of an innocent purchaser for value. The case recognizes the general rule, but takes mortgages out of it upon the supposed wording of former G.S. 39-20. Aside from the fact that this is held expressly otherwise in the later case of Moore v. Woodward, 83 N.C. 531 (1880), an examination of former G.S. 39-20 will show that Coor v. Spicer was a palpable inadvertence. That statute in fact does not purport to protect the innocent holder of a mortgage note which is tainted with usury but the "purchaser of the estate or property" at sale under the mortgage, who buys without notice of the usurious taint in the debt secured. It would be a fraud for the mortgagor to stand by and let him purchase without giving him notice, but the make can give no notice usually to the assignee of the note. Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

"Shall Be a Forfeiture" Construed. — The Supreme Court has expressly held that the words "shall be a forfeiture" in this section makes void the agreement as to interest. Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

V. USURY LAWS AS AFFECTING CORPORATIONS.

Corporations Are Embraced Within Usury Laws. — In the absence of special legislation, corporations are embraced in the usury laws just as natural persons are. Commissioners of Craven v. Atlantic & N.C.R.R., 77 N.C. 289 (1877).

Conflict of Laws. — A statute of another state forbidding corporations to plead usury as a defense cannot govern a corporation of this State sued in this State, although the bonds in question were delivered in the other state and made payable there. Commissioners of Craven v. Atlantic & N.C.R.R., 77 N.C. 289 (1877).

Where such bonds express a rate of interest illegal in this State, and also in the other state, and were issued in payment of a precedent debt and secured by a mortgage on the corporation's property, they could legally bear no greater rate of interest than that allowed in this State. Commissioners of Craven v. Atlantic & N.C.R.R., 77 N.C. 289 (1877).

Sale of Bonds at Discount. — Under this section as it then read, a corporation could not legally sell its bonds, bearing the highest legal rate of interest, at a discount for the purpose of borrowing money. Such a sale was in effect a loan, and was usurious. Commissioners of Craven v. Atlantic & N.C.R.R., 77 N.C. 289 (1877).

Provisions of Corporate Charter Construed. — The language in alleged act of incorporation, "May discount notes and other evidences of debt, and lend money upon such terms and rates of interest as may be agreed upon," did not confer the right to exact a rate of interest greater than the legal rate. The statute nowhere confers an express power to exceed the legal rate of interest and the operative words, "any rate of interest that may be agreed on," meant any rate of interest not greater than the legal rate. Simonton v. Lanier, 71 N.C. 498 (1874).

VI. PLEADING AND PRACTICE.

Usury must be pleaded. Dixon v. Smith, 204 N.C. 480, 168 S.E. 683 (1933).

And Proved. — Where there is no evidence that any holder of the note executed by plaintiffs has charged or received interest thereon in excess of six percent (now eight percent), in an action on the note plaintiffs may not invoke the forfeiture of interest for usury. Smith v. Bryant, 209 N.C. 213, 183 S.E. 276 (1936).

By Whom Pleaded. — The plea of usury is open to the parties and their privies, and may be made when, by the transaction, the debtor's estate is wrongfully depleted, and ordinarily by one having the legal right to protect the estate, as a receiver of an insolvent corporation against which a usurious contract is sought to be enforced. Riley v. Sears, 154 N.C. 509, 70 S.E. 997 (1911).

Class Actions Allowed. — When the General Assembly has wished to prevent class actions to enforce statutory claims for relief, where the relief sought was personal and penal in nature, it has said so expressly and unequivocally. The failure of the General Assembly to expressly prohibit class actions to enforce this statute convinces the Supreme Court that it intended to allow them for such purposes. Crow v. Citicorp Acceptance Co., 319 N.C. 274, 354 S.E.2d 459 (1987).

Rights of Trustee in Bankruptcy. — A right of action to recover the penalty for a usury charge is in the nature of an action for debt, and is a wrongful detention of, or injury to, the estate of the bankrupt which passes to his trustee in bankruptcy. Ripple v. Mortgage & Acceptance Corp., 193 N.C. 422, 137 S.E. 156 (1927).

When Tender Is Required. — A claim of forfeiture of all interest for usury may be properly set up as a defense in the creditor's action on the debt without a tender of the debt with legal interest. Tender is required only when the debtor seeks affirmative equitable relief such as enjoining the collection of the debt or the foreclosure of the security therefor. Virginia Trust Co. v. Lambeth Realty Corp., 215 N.C. 526, 2 S.E.2d 544 (1939).

When Counterclaim Is Available. — While a counterclaim for usury may be set up in an action on a note under this section, such counterclaim may not be set up in an action in ejectment based on title to the property under foreclosure of the deed of trust securing the note. North Carolina Mtg. Corp. v. Wilson, 205 N.C. 493, 171 S.E. 783 (1933).

The purpose and intent of the counterclaim provision was not to restrict the right of recovery by way of counterclaim, but rather to make it clear that the right granted by the statute to recover the penalty for usurious interest paid "in the action in the nature of action for debt," could be pleaded as a counterclaim in an action between the parties. Commercial Credit Corp. v. Robeson Motors, Inc., 243 N.C. 326, 90 S.E.2d 886 (1956).

While this section provides that a counterclaim for usury may be set up in an action to recover upon the note or other evidence of debt, on which the alleged usurious interest has been charged, such a counterclaim may not be pleaded in an action based on other cause of action. Commercial Fin. Co. v. Holder, 235 N.C. 96, 68 S.E.2d 794 (1952).

There was no conflict between this section and subsection (2) of former G.S. 1-137 in reference to pleading of counterclaim for usury. Commercial Credit Corp. v. Robeson Motors, Inc., 243 N.C. 326, 90 S.E.2d 886 (1956).

Construing this section and former G.S. 1-137 (2) in pari materia, where a lender brings an action to recover on a note or other evidence of debt, the borrower, by counterclaim in such action, can recover the penalty for usurious interest paid by the borrower to the lender in connection with separate and independent transactions between them. Commercial Credit Corp v. Robeson Motors, Inc., 243 N.C. 326, 90 S.E.2d 886 (1956).

Definiteness of Allegations. — In an action brought to recover money alleged to be due on a contract entered into between the parties, wherein the plea of usury is set up in the answer and a recovery is sought under this section for double the amount of the interest paid, the recovery sought is in the nature of a penalty; when the facts are known or readily obtainable the law requires a definite statement in the pleading as to the time and amount, before allegations in such action are held to be sufficient, and when such statement is not made no amendment to the pleadings should be allowed. Riley v. Sears, 154 N.C. 509, 70 S.E. 997 (1911).

Burden of Proof on Plaintiff. — Upon the trial of an action to recover for usury, the burden of proof is on the plaintiff throughout the trial to establish his cause of action. Hodge v. First Atl. Corp., 10 N.C. App. 632, 179 S.E.2d 855, cert. denied, 278 N.C. 701, 181 S.E.2d 602 (1971).

Where plaintiff failed to show that defendant did not in fact render services for the one percent "service charge" or "construction loan fee," defendant was entitled to directed verdict that such "charge" or "fee" was not a part of the interest charged on the loan. Hodge v. First Atl. Corp., 10 N.C. App. 632, 179 S.E.2d 855, cert. denied, 278 N.C. 701, 181 S.E.2d 602 (1971).

Amendment of Complaint. — Where plaintiff in its complaint sought interest in excess of the 12% allowed under G.S. 24-1.1, but presented evidence as to the amount of interest when calculated at 12%, the trial court did not abuse its discretion in granting an amendment to the pleadings so as to reduce the interest sought to that calculated at 12% per annum. Northwestern Bank v. Barber, 79 N.C. App. 425, 339 S.E.2d 452, cert. denied, 316 N.C. 733, 345 S.E.2d 391 (1986).

Statute of Limitations. — An action to recover the penalty for usury, under this section, is barred after the lapse of two years from the accrual of the cause of action in the absence of disability or nonresidence affecting the running of the statute. Smith v. Finance Co. of Am., 207 N.C. 367, 177 S.E. 183 (1934).

Where plaintiff filed his complaint seeking forfeiture of all interest more than two years after the execution of promissory note, the two-year statute of limitations barred plaintiff's claim for forfeiture of interest pursuant to this section. Adams v. Beard Dev. Corp., 116 N.C. App. 105, 446 S.E.2d 862 (1994).

Same — Nonresident Creditor. — An action for the statutory penalty for charging usury, brought against a nonresident creditor who has no agent here upon whom process may be served, is not barred by the statute of limitations, nor does the fact in such case that one of the plaintiffs is a nonresident and the other has changed his residence affect the matter. Cuthberton v. Peoples Bank, 170 N.C. 531, 87 S.E. 333 (1915).

Setting Aside Fraudulent Conveyance. — In a creditor's action to establish its debt and to have a subsequent conveyance by the debtor set aside as fraudulent as to creditors, the fact that plaintiff's debt is tainted with usury entitles defendant debtor to invoke the forfeiture of interest, but does not defeat plaintiff's action, or estop plaintiff from asserting the equitable remedy of setting aside the fraudulent conveyance under the doctrine that he who seeks equity must come into court with clean hands. Virginia Trust Co. v. Lambeth Realty Corp., 215 N.C. 526, 2 S.E.2d 544 (1939).

Restraining Foreclosure. — The holder of a second mortgage, able and willing to pay the amount of the debt secured by the first mortgage, but alleging usury under this section, is entitled to have a restraining order against foreclosure continued until determination of the issue of usury. Wilson v. Union Trust Co., 200 N.C. 788, 158 S.E. 479 (1931).

Borrower May Use Lender as Witness. — To the end that the defense may be ample and complete, if the borrower in his discretion should resort to his remedy under this section he is authorized to examine the lender as a witness. Merchants Bank v. Lutterloh, 81 N.C. 142 (1879).

Usury as Question of Law When Facts Not in Dispute. — What constitutes usury is a question of law to be determined by the court when the facts are not in dispute. Grant v. Morris & Sons, 81 N.C. 150 (1879).

When Usury Is Question for Jury. — Where, in an action upon a note, the defendant pleads the usury statute, and the evidence is sufficient to sustain a verdict that the excess of interest was a proper charge made for negotiating the loan, the question should be submitted to the jury. Swamp Loan & Trust Co. v. Yokley, 174 N.C. 573, 94 S.E. 102 (1917).

If a transaction is of doubtful character it should be submitted to the jury for determination. Carolina Indus. Bank v. Merrimon, 260 N.C. 335, 132 S.E.2d 692 (1963).

Where the plea of the usury under this section is made by the plaintiff in the action to enjoin the defendant from the sale of land securing a mortgage note, and there is a dispute as to whether the charge made was usurious, and as to the amount due under the mortgage, it is reversible error for the trial judge to assume the correctness of the plaintiff's contentions as a fact, and take the case from the jury accordingly. Miller v. Dunn, 188 N.C. 379, 124 S.E. 746 (1924).

The fact that a sum borrowed was made payable to the borrowers and an attorney with allegations and evidence that the attorney under instructions from the lender deducted a certain sum therefrom before the borrowers could obtain the money, together with the "item of expense" set out in the deed of trust securing the loan, is held sufficient to have been submitted to the jury on the question of usury. Jonas v. Home Mtg. Co., 205 N.C. 89, 170 S.E. 127 (1933).

Where the plaintiff alleged usury and the defendant contended that the transaction was within the "commission for the sale of bonds" exception to the usury law, it was held that as the evidence was conflicting it was properly submitted to the jury, and was sufficient to support its verdict in plaintiff's favor. Sherrill v. Hood, 208 N.C. 472, 181 S.E. 330 (1935).

Effect of Consent Judgment. — Where a controversy between the parties as to the amount of the debt has been settled by a consent judgment such judgment is conclusive and final as to any matter determined and cannot be impeached collaterally in another proceeding under this section. Rector v. Suncrest Lumber Co., 52 F.2d 946 (4th Cir. 1931).

Failure to Instruct as to Double Recovery Is Prejudicial. — The plaintiff in his action to recover for usurious rate of interest paid and received by the lender is entitled under this section to recover double the amount of the interest so paid and received, and an instruction to the jury that fails to give him this right is prejudicial to him and is reversible error. Bundy v. Commercial Credit Co., 200 N.C. 511, 157 S.E. 860 (1931).

§ 24-2.1. Transactions governed by Chapter.

(a) For purposes of this Chapter, any extension of credit shall be deemed to have been made in this State, and therefore subject to the provisions of this Chapter if the lender offers or agrees in this State to lend to a borrower who is a resident of this State, or if such borrower accepts or makes the offer in this State to borrow, regardless of the situs of the contract as specified therein.

(b) Any solicitation or communication to lend, oral or written, originating outside of this State, but forwarded to and received in this State by a borrower who is a resident of this State, shall be deemed to be an offer or agreement to lend in this State.

(c) Any solicitation or communication to borrow, oral or written, originating within this State, from a borrower who is a resident of this State, but forwarded to, and received by a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in this State.

(d) Any oral or written offer, acceptance, solicitation or communication to lend or borrow, made in this State to, or received in this State from, a borrower who is not a resident of this State shall be subject to the provisions of this Chapter, applicable federal law, law of the situs of the contract, or law of the residence of any such borrower as the parties may elect.

(e) Any person who acquires a right by contract or by assignment to receive payments under a loan made in this State to an individual or individuals who is a resident of this State at the time of the loan and who benefits from the laws of this State by having the loan secured by real property located in this State is deemed to have consented to the courts of this State having jurisdiction over such person for any claim under this Chapter and for any claim related to the loan instrument.

(f) The provisions of this section shall be severable and if any phrase, clause, sentence or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.

(g) It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws. Any provision of this section which acts to interfere in the attainment of that public policy shall be of no effect. (1979, c. 706, s. 3; 1983, c. 126, s. 11; 2007-351, s. 3.)

CASE NOTES

Chapter Places Burden of Expertise on Lender. — The usury statutes relieve the borrower of the necessity for expertise and vigilance regarding the legality of rates he must pay. That onus is placed instead on the lender, whose business it is to lend money for profit and who is thus in a better position than the borrower to know the law. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

"Usury Savings Clause". — A lender cannot charge usurious rates with impunity via a "usury savings clause," by making that rate conditional upon its legality and relying upon the illegal rate's automatic rescission when discovered and challenged by the borrower. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

Cited in State ex rel. Cooper v. NCCS Loans, Inc., 174 N.C. App. 630, 624 S.E.2d 371, 2005 N.C. App. LEXIS 2588 (2005); Odell v. Legal Bucks, LLC, — N.C. App. —, 665 S.E.2d 767, 2008 N.C. App. LEXIS 1619 (2008).

§ 24-2.2. Interest on extensions of credit by banks and savings and loan associations; exceptions.

Notwithstanding any other provision of law, banks and savings and loan associations chartered in North Carolina by the State of North Carolina or the federal government shall each be entitled to charge on extensions of credit those interest rates allowed any lender under North Carolina law. Provided, that any extension of credit pursuant to this authority shall be governed by those restrictions or limitations contained in the authorizing statute. Provided further, the authority granted under this section shall not apply to rates provided in Article 15 of Chapter 53, the Consumer Finance Act, nor in Subchapter III of Chapter 54, concerning credit unions. (1983, c. 126, s. 8.)

§ 24-2.3. State opt-out from federal preemption.

(a) The provisions of section 501, of United States Public Law 96-221, as well as any modifications made to date, shall not apply to loans, mortgages, credit sales and advances made in this State.

(b) Effective July 1, 1995, sections 521-524 of United States Public Law 96-221, shall apply to loans, mortgages, credit sales, and advances made in this State on or after that date as if North Carolina had never opted out of sections 521-524 of United States Public Law 96-221. (1983, c. 126, s. 1; 1995, c. 387, s. 1.)

§ 24-2.4. Prepayment of a loan if there are no prepayment terms or if the prepayment terms are not in accordance with law.

A borrower may prepay a loan in whole or in part without penalty where the loan instrument does not explicitly state the borrower's rights with respect to prepayment or where the provisions for prepayment are not in accordance with law. (1985, c. 681, s. 1.)

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Prepayment Allowed Prior to Enactment of this Section. — Considering the acts of the General Assembly, specifically G.S. 24-10 and 24-1.1A, the law of North Carolina prior to the enactment of this section was that the mortgagor had the right of prepayment when the note was silent. Hatcher v. Rose, 329 N.C. 626, 407 S.E.2d 172 (1991).

Prepayment was allowed on a promissory note executed before the enactment of this section, and for the purchase of real estate even though the note did not by specific language either prohibit or permit prepayment. Hatcher v. Rose, 329 N.C. 626, 407 S.E.2d 172 (1991).

Applied in Hatcher v. Rose, 97 N.C. App. 652, 389 S.E.2d 442 (1990).

Cited in In re Carr Mill Mall Ltd. Partnership, 201 Bankr. 415 (Bankr. M.D.N.C. 1996).

§ 24-2.5. Mortgage bankers and mortgage brokers.

A mortgage broker or a mortgage banker originating a loan in a table-funded loan transaction in which the mortgage broker or mortgage banker is identified as the original payee of the note shall be considered a lender for purposes of this Chapter. (1999-332, s. 3.)

§ 24-3. Time from which interest runs.

Interest is due and payable on instruments, as follows:

(1) All bonds, bills, notes, bills of exchange, liquidated and settled accounts shall bear interest from the time they become due, provided such liquidated and settled accounts be signed by the debtor, unless it is specially expressed that interest is not to accrue until a time mentioned in the said writings or securities.

(2) All bills, bonds, or notes payable on demand shall be held and deemed to be due when demandable by the creditor, and shall bear interest from the time they are demandable, unless otherwise expressed.

(3) All securities for the payment or delivery of specific articles shall bear interest as moneyed contracts; and the articles shall be rated by the jury at the time they become due.

(4) Bills of exchange drawn or indorsed in the State, and which have been protested, shall carry interest, not from the date thereof, but from the time of payment therein mentioned. (1786, c. 248, P.R.; 1828, c. 2; R.C., c. 13; Code, ss. 44, 45, 46, 47; Rev., s. 1952; C.S., s. 2307.)

Cross References. — As to commercial paper, see G.S. 25-3-118(d), 25-3-122(4). As to money due as owelty, see G.S. 46-11.

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Necessity of Demand. — A person holding money belonging to another is not liable for interest thereon, except from the date of demand. Hyman v. Gray, 49 N.C. 155 (1856); Neal v. Freeman, 85 N.C. 441 (1881).

Interest from Commencement of Action in Absence of Demand. — Where interest runs from the date of demand, and no demand has been made, interest will be allowed from the date of commencement of suit. Porter v. Grimsley, 98 N.C. 550, 4 S.E. 529 (1887).

Coupons or Installments of Interest Bear Interest from Demand. — Coupons or installments of interest bear interest from the time of a demand of payment made after their maturity. Burroughs v. Commissioners, 65 N.C. 234 (1871).

Or from Maturity If Detached. — Coupons, when detached from the bond to which they were annexed, bear interest from the time when they were due and payable. Burroughs v. Commissioners, 65 N.C. 234 (1871).

A premium note for life insurance at six per cent interest draws that rate from its date unless otherwise specified. Owens v. North State Life Ins. Co., 173 N.C. 373, 92 S.E. 168 (1917).

Order of County Treasurer for Payment of Money. — Where A brought an action upon an order of a county treasurer, signed by the chairman of the board of county commissioners, it was held under this section that he was entitled to recover interest upon the amount of the order from the time of the demand of payment. Yellowly v. Commissioners, 73 N.C. 164 (1875).

Bond Payable Without Interest. — Where a note or bond is made payable without interest at a certain date, interest does not run thereon except from the time when it should have been paid. Dowd v. North Carolina R.R., 70 N.C. 468 (1874).

Unliquidated Damages. — Unliquidated damages as a general rule, and in the absence of special circumstances, do not bear interest until after their amount has been judicially ascertained. Tilghman v. Proctor, 125 U.S. 136, 8 S. Ct. 894, 31 L. Ed. 664 (1888).

When interest is recoverable on amount of verdict, it will run from the date of the verdict, unless it can be legally determined before then. Ludford v. Combs, 195 N.C. 851, 141 S.E. 541 (1928).

§ 24-4. Obligations due guardians to bear compound interest; rate of interest.

Guardians shall have power to lend any portion of the estate of their wards upon bond with sufficient security, to be repaid with interest annually, and all the bonds, notes or other obligations which he shall take as guardian shall bear compound interest, for which he must account, and he may assign the same to the ward on settlement with him. On loans made out of the estate of their wards, guardians may lend at any rate of interest not less than four percent per annum and not more than the maximum lawful rate. This section shall in no way limit or affect the powers of guardians to make other investments which are now or may hereafter be authorized or permitted by the laws, statutory or otherwise, of the State of North Carolina. (1762, c. 69, P.R.; 1816, c. 925, P.R.; R.C., c. 54, s. 23; 1868-9, c. 201, s. 29; Code, s. 1592; Rev., s. 1953; C.S., s. 2308; 1943, c. 728; 1969, c. 1303, s. 4.)

Legal Periodicals. — For comment on equity participation (a device to circumvent usury laws) in real estate finance, see 7 N.C. Cent. L.J. 387 (1976).

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Security in Addition to That of Borrower Must Be Taken. — The policy of this section is to require an investment by a guardian to be secured by the bond or note of some person in addition to the borrower. Watson v. Holton, 115 N.C. 36, 20 S.E. 183 (1894).

Or Guardian Is Liable for Any Loss. — Where guardian loaned the money of his ward to a trading firm composed of two partners, who both became insolvent at the same time, and from the same causes, no security having been taken besides the names of the two partners, it was held that the guardian was accountable for the money thus loaned, notwithstanding at the time of this loan the partners were considered as entirely solvent and their failure was sudden and unexpected. Boyett v. Hurst, 54 N.C. 166 (1854).

A guardian will be held liable for any loss resulting from a loan made without taking any security, however solvent the debtor may have been when the loan was made. Collins v. Gooch, 97 N.C. 186, 1 S.E. 653 (1887); Bane v. Nicholson, 203 N.C. 104, 164 S.E. 750 (1932).

A guardian's primary duty is to invest the trust fund, and he will be chargeable with interest in the absence of proof that it remained in his hands unemployed without his fault. Wilson v. Lineberger, 88 N.C. 416 (1883), modified, 90 N.C. 180 (1884).

Calculation of Compound Interest. — The rule for compounding interest on notes due guardians is "to make annual rests," making the aggregate of principal and interest due at the end of a particular year a new principal, bearing interest thenceforward for another year. Ford v. Vandyke, 33 N.C. 227 (1850); Little v. Anderson, 71 N.C. 190 (1874).

Bonds Themselves May Be Transferred to Ward. — The bonds, upon which the guardian has lent the ward's money, may be transferred by him to the ward in settlement with him, and the guardian does not have to pay the ward in money. Cobb v. Fountain, 187 N.C. 335, 121 S.E. 614 (1924).

Applied in Robinson v. Ham, 215 N.C. 24, 200 S.E. 903 (1939).

§ 24-5. Interest on judgments.

(a) Actions on Contracts. — In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

(a1) Actions on Penal Bonds. — In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied.

(b) Other Actions. — In an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate. (1786, c. 253, P.R.; 1789, c. 314, s. 4, P.R.; 1807, c. 721, P.R.; R.C., c. 31, s. 90; Code, s. 530; Rev., s. 1954; C.S., s. 2309; 1981, c. 327, s. 1; 1985, c. 214, s. 1; 1987, c. 758; 1999-384, s. 1; 2000-133, s. 8; 2003-59, s. 4.)

Editor's Note. — In 1995, the North Carolina Supreme Court held in Custom Molders, Inc. v. American Yard Products, Inc., 342 N.C. 133, 463 S.E.2d 199 (1995), that an applications provision in the 1985 session law rewriting this section had the effect of continuing a sentence from the pre-1981 version of subsection (b) that allowed for postjudgment interest on noncontract awards generally, although the General Assembly failed to include the sentence in the 1985 revision. Session Laws 1999-384, s. 1, in part inserted the second sentence in subsection (b), similarly allowing postjudgment interest on noncontract awards.

This section, as amended by Session Laws 2003-59, s. 4, effective September 1, 2003, is applicable to all judgments entered, indexed, and docketed on or after that date.

Legal Periodicals. — For note, "Baxley v. Nationwide Mutual Insurance Company: A Key Loophole in the Financial Responsibility Act of 1953 Comes to Light," see 72 N.C.L. Rev. 1809 (1994).

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I. In General.
II. Contracts.
III. Other Actions.
IV. Prejudgment Interest.

I. IN GENERAL.

Editor's Note. — *Many of the cases cited below were decided prior to the 1981, 1985, and 1987 amendments to this section.*

Constitutionality. — This section does not violate the equal protection clause of the U.S. Const., Amend. XIV or N.C. Const., Art. I, § 19. Powe v. Odell, 312 N.C. 410, 322 S.E.2d 762 (1984); Lowe v. Tarble, 313 N.C. 460, 329 S.E.2d 648 (1985).

This section does not violate N.C. Const., Art. I, § 19, the equal protection and due process clauses of U.S. Const., Amend. XIV, or the exclusive emoluments clause contained in N.C. Const., Art. I, § 32. Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984), aff'd on rehearing, 313 N.C. 460, 329 S.E.2d 648 (1985); Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

The legislature could reasonably have concluded that the classification scheme established by this section would best serve to further important and legitimate public purposes, including compensation of a plaintiff for the loss-of-use value of a damage award, the prevention of unjust enrichment to liability insurers who are required by law to maintain claim reserves on which interest is earned, and the promotion of settlement by these insurers, who, unlike self-insurers, have as their primary business the insuring, investigation, defense and settlement of claims. The Legislature could have reasonably concluded that the distinction between defendants with liability insurance and those without was a valid one, and that the public welfare would be best served by such a classification. Therefore, this section does not create a special emolument or privilege within the meaning of N.C. Const., Art. I, § 32. Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984), aff'd on rehearing, 313 N.C. 460, 329 S.E.2d 648 (1985).

Legislative Intent. — The probable intent of this section is threefold: (1) to compensate plaintiffs for loss of the use of their money; (2) to prevent unjust enrichment of the defendant by having money he should not have; and (3) to promote settlement. Brown v. Flowe, 349 N.C. 520, 507 S.E.2d 894 (1998).

Section Changes Common Law. — At common law a judgment did not carry interest when an execution of sci. fa. was issued upon it. In an action upon the judgment the plaintiff could recover interest by way of damages for the detention of the money. The statute was passed for the purpose of amending the law in this respect. Collais v. McLeod, 30 N.C. 221 (1848). The intent was that the principal should bear interest because it was just and right that it should, and that the technical rule of the common law should no longer stand in the way. McNeill v. Durham & C.R.R., 138 N.C. 1, 50 S.E. 458 (1905).

This section is not exclusive in prescribing instances in which interest is recoverable, and in proper instances interest may be recovered upon transactions not coming within the statute. Anderson Cotton Mills v. Royal Mfg. Co., 221 N.C. 500, 20 S.E.2d 818 (1942).

Application of Section. — This section is obviously referring to claims which are defended by the liability insurer, because there is no logical reason to distinguish between claims against an uninsured defendant and an insured defendant defending a claim which falls short of the deductible amount of the insurance policy. R-Anell Homes, Inc. v. Alexander & Alexander, Inc., 62 N.C. App. 653, 303 S.E.2d 573 (1983).

Superior court erred by ordering a city to pay postjudgment interest under G.S. 24-5(b) because the statute was not applicable as the functions in which the city engaged, the enforcement of state and municipal traffic laws and the management of the proceeds collected for violations of the laws, were governmental functions. Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006), cert. denied, appeal dismissed, 361 N.C. 430, 648 S.E.2d 845 (2007).

Purpose of 1981 Amendment. — The legislature's purpose in amending this section in 1981 to provide for prejudgment interest in tort actions when the claim is covered by liability insurance was to provide an incentive to insurance companies to expeditiously litigate actions they are involved in. Harwood v. Harrelson Ford, Inc., 78 N.C. App. 445, 337 S.E.2d 158 (1985).

Applicability of 1981 Amendment. — The Legislature's intent was to make Session Laws 1981, c. 327, G.S. 1, which amended this section, inapplicable to pending litigation. Harwood v. Harrelson Ford, Inc., 78 N.C. App. 445, 337 S.E.2d 158 (1985).

Plaintiffs who, on April 29, 1982, voluntarily dismissed actions filed on August 13, 1980, pursuant to G.S. 1A-1, Rule 41(a), and subsequently commenced new actions on August 26, 1982, following the effective date of the amendment to this section by Session Laws 1981, c. 327, were entitled, upon the return of verdicts in their favor, to prejudgment interest from August 26, 1982. State v. Knox, 78 N.C. App. 493, 337 S.E.2d 154 (1985).

Plaintiff whose action was instituted almost a year prior to the 1981 amendment to this section and was pending upon its ratification should not have been granted prejudgment interest. Harwood v. Harrelson Ford, Inc., 78 N.C. App. 445, 337 S.E.2d 158 (1985).

Purpose of 1985 Amendment. — When the legislature amended subsection (a) in 1985 to provide that the amount awarded on contract bears interest from date of breach it obviated the need for the rule that when the amount of damages in a breach of contract action is ascertained from contract itself, relevant evidence, or both, interest should be allowed from the date of breach. Metromont Materials Corp. v. R.B.R. & S.T., 120 N.C. App. 616, 463 S.E.2d 305 (1995).

Applicability of 1985 Amendment. — The important date for determining whether the 1985 amendment to this section applies to any action is the date the action is commenced and not the date the contract was entered; therefore, the amendment, effective Oct. 1, 1985, and applicable to all claims except claims pending on that date, clearly applied to action for breach of contract instituted Aug. 21, 1986. Pickard Roofing Co. v. Barbour, 94 N.C. App. 688, 381 S.E.2d 341 (1989).

This section is not a part of the Financial Responsibility Act; therefore, its provisions need not be written into every automobile liability insurance policy. Sproles v. Greene, 329 N.C. 603, 407 S.E.2d 497 (1991).

This section has no application to a judgment against the State Highway Commission. Yancey v. North Carolina State Hwy. & Pub. Works Comm'n, 222 N.C. 106, 22 S.E.2d 256 (1942); North Carolina State Hwy. & Pub. Works Comm'n v. Privett, 246 N.C. 501, 99 S.E.2d 61 (1957).

Interest on Costs. — In this State, interest on costs is expressly disallowed by statute. City of Charlotte v. McNeeley, 281 N.C. 684, 190 S.E.2d 179 (1972).

Judgment Bears Interest Though Nothing Is Said. — By virtue of this section a judgment bears interest from the time of its rendition until paid, though nothing is said therein about interest. McNeill v. Durham & C.R.R., 138 N.C. 1, 50 S.E. 458 (1905).

This section was held directory so far as it provided that the judgment must itself state that it shall bear interest from the date of rendition until it is paid. It is perfectly clear that such a statement in the judgment is not essential to effectuate the intent of the Legislature, which is to allow interest on judgments. McNeill v. Durham & C.R.R., 138 N.C. 1, 50 S.E. 458 (1905).

If Judgment Enables Officer to Compute Interest. — It is best always that the court in its judgment should state fully the amount to be raised by the execution, both principal and interest; but the plaintiff will not forfeit his right to interest by the failure to do this, when enough appears on the face of the judgment to enable the officer to compute the amount justly due. All he is required to know is the amount of the principal, and then the statute makes that amount bear interest to the time of payment. McNeill v. Durham & C.R.R., 138 N.C. 1, 50 S.E. 458 (1905).

And no discretion is vested in the court to determine what shall be the rate of interest in a given case. Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968).

Interest on Contracts and Torts Distinguished. — Where a verdict is given in an action on contract in plaintiff's favor for moneys due by the defendant to plaintiff's intestate, interest is also given plaintiff on the amount of the recovery as a matter of law, when not incorporated in the verdict. When in tort the matter of interest is awarded or not according as the jury may find. Thomas v. Watkins, 193 N.C. 630, 137 S.E. 818 (1927).

Tender of Payment. — To constitute a valid tender of payment in North Carolina and thus stop the running of interest, the offer must include the full amount the creditor is entitled to receive plus all interest to the date of tender. Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968).

Where case was erroneously nonsuited and the nonsuit was reversed on appeal, plaintiffs were entitled to interest from the first day of the term at which the nonsuit was erroneously entered. Jackson v. Gastonia, 247 N.C. 88, 100 S.E.2d 241 (1957).

Plaintiffs held entitled to interest on entire amount of judgment. — Where defendants tendered $20,000 to plaintiff pursuant to settlement agreement and plaintiff was entitled to rescind that agreement, trial court erred in awarding interest only on $31,749.97 of the $51,749.97 judgment; in refusing the check for $20,000 tendered by defendants, plaintiff was deprived of the $20,000 and was entitled to recover interest on that amount. Thompson-Arthur Paving Co. v. Lincoln Battleground Assocs., 95 N.C. App. 270, 382 S.E.2d 817 (1989).

Superior Court judge had no authority to entertain or allow motions for the payment of prejudgment interest or postjudgment interest on a judgment entered more than four years before the motion in the cause was made; said motions should have been dismissed. Roach v. Smith, 102 N.C. App. 482, 402 S.E.2d 173 (1991).

Prejudgment Interest in an Action for Breach of an Implied Warranty of Habitability. — Because an implied warranty of habitability is a quasi-contract, the awarding of interest relative to such an action is governed by subsection (b) of this section, not subsection (a); thus, the trial court correctly awarded plaintiff homeowners prejudgment interest from the date the action was instituted, rather than from the date of breach. Medlin v. FYCO, Inc., 139 N.C. App. 534, 534 S.E.2d 622, 2000 N.C. App. LEXIS 995 (2000).

Postjudgment Interest on Treble Damages. — This section provides for postjudgment interest on judgments for money damages generally, including a judgment for treble damages, until the judgment is paid. Custom Molders, Inc. v. American Yard Prods., Inc., 342 N.C. 133, 463 S.E.2d 199 (1995).

Unconditional Payment Offers. — An aggrieved party may, without prejudice to its right to recover prejudgment interest, decline unconditional payment offers. Members Interior Constr., Inc. v. Leader Constr. Co., 124 N.C. App. 121, 476 S.E.2d 399 (1996).

Nothing in this section precludes the award of interest damages when those damages are recoverable under ordinary damage principles as a natural and foreseeable consequence of wrongdoing or damages within the contemplation of the parties as a probable result of their wrongdoing. Broussad v. Meineke Disct. Muffler Shops, Inc., 958 F. Supp. 1087 (W.D.N.C. 1997).

There is no indication that this section is designed to cap or otherwise diminish damages based on lost interest where those damages are recoverable under ordinary damage principles. Broussad v. Meineke Disct. Muffler Shops, Inc., 958 F. Supp. 1087 (W.D.N.C. 1997).

Decisions Under Prior Law. — The legislature intended the words "from the time of the verdict" to mean the verdict upon which judgment in favor of plaintiff was rendered. Phelps v. Duke Power Co., 324 N.C. 72, 376 S.E.2d 238 (1989) (decided under prior law).

Former G.S. 24-5 was obviously meant to change the common law rule so that tort damages reduced to judgment would bear interest from the time the action was commenced provided the damages ordered to be paid were covered by liability insurance, and the legislature did not intend to change the rule regarding the accrual of interest on tort claims not covered by liability insurance. Phelps v. Duke Power Co., 324 N.C. 72, 376 S.E.2d 238 (1989).

When plaintiff recovers judgment, it is the trial court's duty, on its own motion, to inquire of the defendant regarding the existence of any liability insurance which could cover the damages awarded, and it is the defendant's duty to respond fully and accurately to the trial court's inquiry. Phelps v. Duke Power Co., 324 N.C. 72, 376 S.E.2d 238 (1989) (decided under prior law).

Interest Could Not be Awarded in Action Against County. — When a county was required to refund "school impact fees" improperly imposed upon new residential construction, it was improper to require it to pay interest on the fees. Postjudgment interest could not be awarded against the state or its subdivisions unless authorized by statute or contract. Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Applied in Red Springs City Bd. of Educ. v. McMillan, 250 N.C. 485, 108 S.E.2d 895 (1959); H.F. Mitchell Constr. Co. v. Orange County Bd. of Educ., 262 N.C. 295, 136 S.E.2d 635 (1964); Glace v. Town of Pilot Mt., 265 N.C. 181, 143 S.E.2d 78 (1965); International Harvester Credit Corp. v. Ricks, 16 N.C. App. 491, 192 S.E.2d 707 (1972); Brown v. Scism, 50 N.C. App. 619, 274 S.E.2d 897 (1981); Gillespie v. DeWitt, 53 N.C. App. 252, 280 S.E.2d 736 (1981); Inco, Inc. v. Planters Oil Mill, Inc., 63 N.C. App. 374, 304 S.E.2d 782 (1983); Ervin v. Speece, 72 N.C. App. 366, 324 S.E.2d 299 (1985); Leary v. Nantahala Power & Light Co., 76 N.C. App. 165, 332 S.E.2d 703 (1985); Mills v. New River Wood Corp., 77 N.C. App. 576, 335 S.E.2d 759 (1985); St. Paul Fire & Marine Ins. Co. v. Branch Banking & Trust Co., 643 F. Supp. 648 (E.D.N.C. 1986); Gerber Prods. Co. v. Fisher Tank Co., 833 F.2d 505 (4th Cir. 1987); Estate of Smith ex rel. Smith v. Underwood, 127 N.C. App. 1, 487 S.E.2d 807 (1997); Webb v. McKeel, 144 N.C. App. 381, 551 S.E.2d 440, 2001 N.C. App. LEXIS 439 (2001); Phillips v. Warren, 152 N.C. App. 619, 568 S.E.2d 230, 2002 N.C. App. LEXIS 959 (2002).

Cited in Bell v. Danzer, 187 N.C. 224, 121 S.E. 448 (1924); Hyde v. Land-Of-Sky Regional Council, 572 F.2d 988 (4th Cir. 1978); Lalanne v. Lalanne, 52 N.C. App. 558, 279 S.E.2d 25 (1981); Davidson & Jones, Inc. v. North Carolina Dep't of Admin., 69 N.C. App. 563, 317 S.E.2d 718 (1984); McDowell v. Smathers Super Mkt., Inc., 70 N.C. App. 775, 321 S.E.2d 7 (1984); Akzona, Inc. v. American Credit Indem. Co., 71 N.C. App. 498, 322 S.E.2d 623 (1984); State v. Stanley, 79 N.C. App. 379, 339 S.E.2d 668 (1986); McNabb v. Town of Bryson City, 82 N.C. App. 385, 346 S.E.2d 285 (1986); Phelps v. Duke Power Co., 86 N.C. App. 455, 358 S.E.2d 89 (1987); Deans v. Layton, 89 N.C. App. 358, 366 S.E.2d 560 (1988); Hagwood v. Odom, 88 N.C. App. 513, 364 S.E.2d 190 (1988); PHC, Inc. v. North Carolina Farm Bureau Mut. Ins. Co., 129 N.C. App. 801, 501 S.E.2d 701 (1998); Eatman Leasing, Inc. v. Empire Fire & Marine Ins. Co., 145 N.C. App. 278, 550 S.E.2d 271, 2001 N.C. App. LEXIS 667 (2001); Green Park Inn, Inc. v. Moore, 149 N.C. App. 531, 562 S.E.2d 53, 2002 N.C. App. LEXIS 287 (2002); Singleton v. Haywood Elec. Membership Corp., 151 N.C. App. 197, 565 S.E.2d 234, 2002 N.C. App. LEXIS 715 (2002); Phillips v. Warren, 152 N.C. App. 619, 568 S.E.2d 230, 2002 N.C. App. LEXIS 959 (2002); Faison & Gillespie v. Lorant, 187 N.C. App. 567, 654 S.E.2d 47, 2007 N.C. App. LEXIS 2566 (2007); Gilbert v. N.C. State Bar, 363 N.C. 70, 678 S.E.2d 602, 2009 N.C. LEXIS 238 (2009).

II. CONTRACTS.

Absent an agreement between parties, the legal rate under § 24-1 is on money owed under a contract. Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968).

Trend Is Toward Allowance of Interest. — There has been a definite trend in North Carolina toward allowance of interest in almost all types of cases involving breach of contract. Harris & Harris Constr. Co. v. Crain & Denbo, Inc., 256 N.C. 110, 123 S.E.2d 590 (1962); T.C. Allen Constr. Co. v. Stratford Corp., 384 F.2d 653 (4th Cir. 1967); Rose v. Vulcan Materials Co., 282 N.C. 643, 194 S.E.2d 521 (1973).

Application Is to Liquidated Demands Only. — The rule that all moneys due by contract, except those due on penal bonds, shall bear interest applies whenever a recovery is had for the breach of a contract and the amount is ascertained from the terms of the contract itself or from evidence relative to the inquiry and is due by one party to the contract to another; and it does not obtain as a matter of law where the interest sought does not come within the provisions of the statute and is by way of unliquidated damages, and there has been no adequate default on the part of the debtor in reference to withholding the principal sum or a part of it. Bond v. Pickett Cotton Mills, 166 N.C. 20, 81 S.E. 936 (1914).

Application to Secured Creditors. — Provisions of G.S. 24-5 did not directly apply to secured creditor's action against creditors who auctioned off the debtors' collateral because the statute was limited to actions for breach of contract. However, the secured creditor's action was one for the tort of conversion, and the secured creditor had no action against the creditors for breach of the security agreement between the debtors and the secured creditor as the creditors were not parties to the agreement. Bartlett Milling Co., L.P. v. Walnut Grove Auction & Realty Co., — N.C. App. —, 665 S.E.2d 478, 2008 N.C. App. LEXIS 1546 (2008).

Interest Is Imposed by Law in Nature of Damages. — A debt draws interest from the date it becomes due, and when interest is not made payable on the face of the instrument, payment of interest will be imposed by law in the nature of damages for the retention of the principal of the debt. Security Nat'l Bank v. Travelers' Ins. Co., 209 N.C. 17, 182 S.E. 702 (1935).

Under this section money due by contract, except money due on penal bonds, bears interest as a matter of law. Anderson Cotton Mills v. Royal Mfg. Co., 221 N.C. 500, 20 S.E.2d 818 (1942).

When interest is not made payable on the face of the instrument, payment of interest will be imposed by law in the nature of damages for the retention of the principal of the debt. Craftique, Inc. v. Stevens & Co., 321 N.C. 564, 364 S.E.2d 129 (1988).

Rate of Interest Controlled By Contract. — Where contracts provided for a specific interest rate on past due accounts, that rate applied prejudgment and, because there was no agreement that such rate would apply postjudgment, the legal rate established by G.S. 24-1 applied. Barrett Kays & Assocs. v. Colonial Bldg. Co., 129 N.C. App. 525, 500 S.E.2d 108 (1998).

When Interest Is Added to Damages for Breach of Contract. — Whenever a recovery is had for breach of contract and the amount of damages is ascertained from the terms of the contract itself or from evidence relevant to the inquiry, interest should be added. Harris & Harris Constr. Co. v. Crain & Denbo, Inc., 256 N.C. 110, 123 S.E.2d 590 (1962); T.C. Allen Constr. Co. v. Stratford Corp., 384 F.2d 653 (4th Cir. 1967); Rose v. Vulcan Materials Co., 282 N.C. 643, 194 S.E.2d 521 (1973).

From What Date Interest Allowed. — Where a controversy was made to depend upon whether a written agreement of a certain date to subscribe to plaintiff's enterprise in a sum certain was binding upon the defendant corporation, the affirmative answer of the jury to the issue carried with it interest on the subscription from the date it was due, as a matter of law. Chatham v. Mecklenburg Realty Co., 174 N.C. 671, 94 S.E. 447 (1917).

Prejudgment Interest from Breach of Contract. — In breach of contract actions, this section authorizes the award of prejudgment interest on damages from the date of the breach at the contract rate, or the legal rate if the parties have not agreed on an interest rate. Furr v. Fonville Morisey Realty, Inc., 130 N.C. App. 541, 503 S.E.2d 401 (1998), cert. dismissed, 351 N.C. 41, 519 S.E.2d 314 (1999).

Trial court incorrectly ordered an employer to pay interest on an award to an employee only from the date of the judgment rather than the date of the breach of employment contract because there was no good faith exception to awarding interest from the date of the breach. Salvaggio v. New Breed Transfer Corp., 150 N.C. App. 688, 564 S.E.2d 641, 2002 N.C. App. LEXIS 645 (2002).

After a railroad breached a contract to relocate, at its own expense, a certain rail line to a phosphate plant, pursuant to G.S. 24-5(a), the plant was entitled to prejudgment interest on the plant's damages award accruing from the date of the contract breach. PCS Phosphate Co. v. Norfolk S. Corp., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 54199 (E.D.N.C. Jan. 28, 2008).

Interest Allowed from Date of Breach. — When the amount of damages in a breach of contract action is ascertained from the contract itself, or from relevant evidence, or from both, interest should be allowed from the date of the breach. General Metals, Inc. v. Truitt Mfg. Co., 259 N.C. 709, 131 S.E.2d 360 (1963); T.C. Allen Constr. Co. v. Stratford Corp., 384 F.2d 653 (4th Cir. 1967); Investment Properties of Asheville, Inc. v. Allen, 281 N.C. 174, 188 S.E.2d 441 (1972), rev'd on other grounds, 283 N.C. 277, 196 S.E.2d 262 (1973); Rose v. Vulcan Materials Co., 282 N.C. 643, 194 S.E.2d 521 (1973); Wilkes Computer Servs., Inc. v. Aetna Cas. & Sur. Co., 59 N.C. App. 26, 295 S.E.2d 776 (1982), cert. denied, 307 N.C. 473, 299 S.E.2d 229 (1983).

Where the amount of damages can be ascertained from the contract, interest is allowed from the date of the breach. Interstate Equip. Co. v. Smith, 292 N.C. 592, 234 S.E.2d 599 (1977); Noland Co. v. Poovey, 58 N.C. App. 800, 295 S.E.2d 238 (1982); Thomas M. McInnis & Assocs. v. Hall, 318 N.C. 421, 349 S.E.2d 552 (1986).

This section authorizes awards of interest on damages resulting from breach of contract from the date of the breach at the rate of interest provided in the contract, or at the legal rate if the parties have not agreed on their own rate. Craftique, Inc. v. Stevens & Co., 321 N.C. 564, 364 S.E.2d 129 (1988).

This section authorizes interest on damages resulting from breach of contract from the date of the breach at the rate of interest provided in the contract or at the legal rate if no other rate is provided; the legal rate of interest on judgments in North Carolina is eight percent (8%) per year. Jacobs v. Central Transp., Inc., 891 F. Supp. 1120 (E.D.N.C. 1995).

Interest Allowed Where Rate on Note Usurious. — Where interest rate on note was usurious and penalty of forfeiture was barred by the statute of limitation, interest allowed was not the maximum legal rate but the legal or judgment rate, and ran from the date of maturity onward. Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989).

Where guarantor had guaranteed inter-

est as well as principal owed by debtor, interest was properly chargeable from the date of debtor's breach, rather than from the date of demand and notice to guarantor. Craftique, Inc. v. Stevens & Co., 321 N.C. 564, 364 S.E.2d 129 (1988).

When Action Is for Breach of Contract. — Although in construing this provision the rule in North Carolina has been that interest should be allowed from the date of breach, this rule is applicable only when the action is one for breach of contract. State ex rel. Edmisten v. Zim Chem. Co., 45 N.C. App. 604, 263 S.E.2d 849 (1980).

Interest Provided from Date of Substantial Performance. — In an action on a construction contract, wherein the defendant counterclaimed for damages for plaintiff's failure to complete the work in a good and workmanlike manner, the judgment entered by the court on the jury verdict should have provided for interest thereon from August 1, 1964 (the date upon which the jury concluded that plaintiff had substantially performed its contract), even though there was a bona fide dispute as to the correct balance due between plaintiff and defendant. T.C. Allen Constr. Co. v. Stratford Corp., 384 F.2d 653 (4th Cir. 1967).

After demand by a depositor or creditor of a bank for the payment of the amount due and refusal of the bank to make payment, the bank is liable for the amount of the claim plus interest. Hackney v. Hood, 203 N.C. 486, 166 S.E. 323 (1932).

Assessments Against Policyholder in Mutual Insurance Company. — Under this section interest should be allowed on assessments against a policyholder in a mutual insurance company under the policies in suit from the dates of the respective demands by the receiver. Miller v. Barnwell Bros., 137 F.2d 257 (4th Cir. 1943).

Breach of Insurance Contract. — For purpose of computing interest, breach of insurance contract occurred when defendant denied plaintiffs' demand for payment. Aills v. Nationwide Mut. Ins. Co., 88 N.C. App. 595, 363 S.E.2d 880 (1988).

Facts Not Excusing Payment of Interest by Insurance Company. — Where, under the terms of a policy of insurance, payment is to be made to the beneficiaries immediately upon receipt of due proof of death of insured, the failure of the insurer to make payment until more than a year after receipt of such due proof entitles the beneficiaries to interest on the amount from the date of insurer's receipt of due proof, and payment of interest will not be excused because payment by insurer was delayed by reason of the fact that the trust agreement under which the policy was assigned was changed without notice to insurer by adding an individual trustee and that the corporate trustee became insolvent before payment and a substituted trustee was appointed and insurer did not have notice of such substitution until a much later date, insurer having had the use of the money during the period of delay. Security Nat'l Bank v. Travelers' Ins. Co., 209 N.C. 17, 182 S.E. 702 (1935).

Purpose of Requiring Jury to Distinguish Principal and Interest. — The evident design of this section is to allow the plaintiff interest on the principal sum recovered in a judgment from the time of its rendition; and the direction to the jury to distinguish between the principal and interest was intended to provide for those cases in which the whole sum is assessed in damages, so as to enable the clerk or the sheriff to compute the interest on the principal sum. But where the principal and interest are discriminated on the record, or it can be collected from an inspection of it what the principal sum was, it is equally within the spirit of the act that interest should be calculated on that. Deloach v. Worke, 10 N.C. 36 (1824).

This section does not require that the issue be submitted to the jury before interest can be allowed in contract cases. The requirement is merely that the jury "distinguish the principal from the sum allowed as interest," which obviously pertains only to those rare situations where evidence as to both principal and interest is submitted to the jury for their consideration. Dailey v. Integon Gen. Ins. Corp., 75 N.C. App. 387, 331 S.E.2d 148, cert. denied, 314 N.C. 664, 336 S.E.2d 399 (1985).

In a case involving the amount due under an insurance policy, computing the interest due was a mere clerical matter, and it would have been an absurd, pointless waste of time to ask the jury to "distinguish" between principal and interest. Dailey v. Integon Gen. Ins. Corp., 75 N.C. App. 387, 331 S.E.2d 148, cert. denied, 314 N.C. 664, 336 S.E.2d 399 (1985).

III. OTHER ACTIONS.

In Tort Actions Judgment for Damages Bears Interest. — Although the allowance of interest in an action for damages for conversion of property is discretionary with the jury, yet, after the verdict, the judgment for the damages assessed bears interest by virtue of this section, and this is so, even though the verdict is for a certain sum "without interest." Stephens v. Koonce, 103 N.C. 266, 9 S.E. 315 (1889).

But interest is not allowable as a matter of law in case of tort. Its allowance as damages rests in the discretion of the jury. Lincoln v. Claflin, 74 U.S. 132, 19 L. Ed. 106 (1868).

It Is Discretionary with Jury to Include Interest in Verdict. — In an action for damages for conversion, the verdict being for the value of the property at the time of the conversion, interest can only begin from the time of the judgment. However, the jury may allow interest on the amount of the damages from time of the conversion. Lance v. Butler, 135 N.C. 419, 47 S.E. 488 (1904).

The rule in this State is that interest, as interest, is allowed only when expressly given by statute, or by the express or implied agreement of the parties. Devereux v. Burgwin, 33 N.C. 490 (1850); Lewis v. Rountree, 79 N.C. 122 (1878). The only statute upon the subject is that contained in this section, which provides that all sums of money due by contract of any kind whatsoever, excepting such as may be due on penal bonds, shall bear interest, etc., but there is no provision made for actions of trover or trespass de bonis asportatis. In such cases, in order to compel the wrongdoer to make full compensation to the injured party, the jury may, in their discretion, and as damages, allow interest upon the value of the property from the time of its conversion or seizure, and it has been usual for them to do so. But there is no rule which gives it as a matter of law and right. Patapsco v. Magee, 86 N.C. 350 (1882).

Under law the jury has discretion to award prejudgment interest in tort cases involving property losses. Leggett v. Rose, 776 F. Supp. 229 (E.D.N.C. 1991).

No Interest on Awards Under State Tort Claims Act Absent Express Statutory Authority. — Because the State Tort Claims Act (G.S. 143-291 et seq.) is in derogation of sovereign immunity, and should, therefore, be strictly construed as written, there must be a specific statutory provision authorizing the accrual of interest on damage awards under the act. And although this section and G.S. 24-7 refer to post-judgment interest, the General Assembly nevertheless recently enacted G.S. 97-86.2 allowing interest on workers' compensation claims to be assessed on awards at the legal rate. Thus, the same type of statutory enactment would be necessary before any interest could accrue to a tort claims award. Myers v. Department of Crime Control & Pub. Safety, 67 N.C. App. 553, 313 S.E.2d 276 (1984).

Plaintiff was not entitled to pre- or post-judgment interest under this section for his claim against the State under the Tort Claims Act. McGee v. North Carolina Dep't of Revenue, 135 N.C. App. 319, 520 S.E.2d 84 (1999).

Interest on Surety Bond. — Where the surety bond of a clerk of the superior court is fixed as to amount in the sum of $5,000.00, to that extent a surety is responsible for the defalcation of his principal, including interest from the time of notice given it, except from judgment thereon, when a different principal applies and the surety is liable for interest on the judgment until it is paid. Lee v. Martin, 188 N.C. 119, 123 S.E. 631 (1924).

The measure of the surety's liability is that of the principal, provided such liability does not exceed the penal sum of the bond, and where a bank gives a bond to an agency of the State to protect such agency's deposit, upon the insolvency of the bank with assets insufficient to pay depositors in full, the State agency may not hold the surety liable for interest from the time action on the bond is instituted, since in such circumstances the bank is not liable for interest, but the surety is liable for interest only from the date of judgment against it on the bond on the amount for which the bank is liable to the State agency as of that date. State v. United States Guarantee Co., 207 N.C. 725, 178 S.E. 550 (1935).

Dividend Declared by Receiver. — Where a receiver declares a dividend which he wrongfully withholds, interest should run from the time the dividend is declared. Armstrong v. American Exch. Nat'l Bank, 133 U.S. 433, 10 S. Ct. 450, 33 L. Ed. 747 (1890).

Interest on Damages in Condemnation Proceedings. — Interest is not allowed on a judgment rendered in the superior court for damages awarded by the jury to the owner for taking his lands in condemnation; for while the jury may award interest in their verdict, the owner may not complain when such has not been done, in the absence of a special request for instructions with relation to it, and the absence of evidence tending to show he is entitled to it. Raleigh, C. & S.R.R. v. Mecklenburg Mfg. Co., 166 N.C. 168, 82 S.E. 5 (1914), appeal dismissed, 169 N.C. 156, 85 S.E. 390 (1915). See also Yancey v. North Carolina State Hwy. & Pub. Works Comm'n, 221 N.C. 185, 19 S.E.2d 489 (1942).

Prejudgment Interest on Compensatory Damages Denied. — Although an underlying wrongful death judgment awarded compensatory damages, apportionment of that judgment did not; therefore, prejudgment interest under G.S. 24-5(b) was properly denied since the contribution action under the Uniform Contribution Among Tortfeasors Act, G.S. 1B-1 et seq., was derivative and based upon the codification of equitable principles. Medical Mut. Ins. Co. v. Mauldin, 157 N.C. App. 136, 577 S.E.2d 680, 2003 N.C. App. LEXIS 376 (2003).

Interest on Eminent Domain Actions. — Trial court erred in awarding 14% interest from the time of entry of judgment until its satisfaction, even though subsection (b) of this section might be construed as allowing interest at the legal rate until judgment is satisfied, because G.S. 40A-53 specifically provides for interest in eminent domain actions during this period at the rate of 6% per annum. Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Interest on Value of Permanent Improvements on Land. — Where it has been ascertained by the verdict of the jury, upon a trial free from error, that the plaintiff is entitled to recover of the defendant the value of permanent improvements he has put upon the defendant's land under a parol agreement that the latter would convey a part of the lands in consideration thereof, void under the statute of frauds, to the extent that the improvements have enhanced the value of the land, interest is properly allowed in the judgment from the time of the defendant's breach, on the amount ascertained to be due at that time; and objection that the jury may have included the interest in their verdict is untenable when it appears that nothing was said by counsel or court in respect to it, the presumption being to the contrary. Perry v. Norton, 182 N.C. 585, 109 S.E. 641 (1921).

Compromise Judgment in Will Contest. — Where, in a will contest, a compromise judgment was entered whereby legatees named in the will were to receive certain amounts in settlement of their legacies which were ordered to be paid by the administrator cum testamento annexo thereafter to be appointed, the judgment was not such a judgment as, under this section would draw interest from its date. Moore v. Pullen, 116 N.C. 284, 21 S.E. 195 (1895).

In an independent civil action upon a prior 1974 judgment on a promissory note, plaintiff was entitled to judgment for the principal amount of the 1974 judgment plus the accrued interest and court costs as of the date of the court's order. However, the legal rate of interest could only be applied to the $100,000.00 principal amount due in the prior judgment. NCNB Nat'l Bank v. Robinson, 80 N.C. App. 154, 341 S.E.2d 364 (1986).

Where a plaintiff brought an action to prevent the 10-year statute of limitations from barring his recovery on a prior judgment, the action was in the nature of an independent action on the judgment, the only procedure in this state by which a judgment can be renewed. As it was a separate and distinct action, the plaintiff could request, in his complaint, interest at the legal rate of eight percent, and the trial court could award interest at that rate from the date the present action was instituted until the judgment is satisfied. Speros Constr. Co. v. Musselwhite, 103 N.C. App. 510, 405 S.E.2d 785 (1991).

Money Wrongfully Received Draws Interest. — Where the theory upon which the plaintiff recovers is that the defendant has received the money wrongfully and that the law implies a promise to repay it, there is no reason why the amount should not draw interest. Barlow v. Norfleet, 72 N.C. 535 (1875); Farmer v. Willard, 75 N.C. 401 (1876); Hilton Lumber Co. v. Atlantic C.L.R.R., 141 N.C. 171, 53 S.E. 823, 6 L.R.A. (n.s.) 225 (1906).

Brokerage Commissions. — Real estate brokerages were entitled to prejudgment interest at the legal rate, where they were denied the use of their commissions by the lessor from the time they were due. Furr v. Fonville Morisey Realty, Inc., 130 N.C. App. 541, 503 S.E.2d 401 (1998), cert. dismissed, 351 N.C. 41, 519 S.E.2d 314 (1999).

Real Estate Commission. — Where a real estate broker is entitled to recover a reasonable amount for his services rendered in securing a tenant for a building, the sum fixed by the verdict will, as a matter of law, draw interest from the time the same was due and payable. Thomas v. Piedmont Realty & Dev. Co., 195 N.C. 591, 143 S.E. 144 (1928).

Interest on Recovery for Quantum Meruit. — It was not improper for the jury to award interest on a recovery for quantum meruit, but since the jury had to determine the reasonable value of services, it was important for it to make the designation between principal and interest. Environmental Landscape Design Specialist v. Shields, 75 N.C. App. 304, 330 S.E.2d 627 (1985).

In an action to enjoin deceptive acts and practices in the sale of antifreeze, interest on the court's judgment ordering defendant to make restoration payments to 33 customers was governed by this section, and should have been awarded only from the time of entry of the judgment. State ex rel. Edmisten v. Zim Chem. Co., 45 N.C. App. 604, 263 S.E.2d 849 (1980).

Interest on Reduced Award. — Trial court did not err in limiting interest allowed plaintiff to the interest on the amount of the jury award as reduced pursuant to G.S. 97-10.2. Absher v. Vannoy-Lankford Plumbing Co., 78 N.C. App. 620, 337 S.E.2d 877 (1985), cert. denied, 316 N.C. 730, 345 S.E.2d 385 (1986).

Interest Improper on Punitive Double Damages. — Trial court should not have awarded prejudgment interest and post-judgment interest on both the compensatory and the G.S. 84-13 punitive double damage award in the state bar's action against the attorney for reimbursement of funds paid to the two clients after the attorney breached the attorney's fiduciary duty to them and converted their funds. G.S. 24-5(b) only allowed interest to be awarded for compensatory damages. N.C. State Bar v. Gilbert, 189 N.C. App. 320, 663 S.E.2d 1, 2008 N.C. App. LEXIS 541 (2008).

Interest on Judgment Proceeds Applied to Workers' Compensation Lien. — Workers' compensation lien on judgment proceeds under the specific facts of case were neither derived from an action in contract nor from an amount "designated by the fact-finder as compensatory damages," and the trial court's award of interest would therefore be vacated. Hieb v. Lowery, 134 N.C. App. 1, 516 S.E.2d 621 (1999).

Under North Carolina law, interest runs

from the date of the defendant's breach, not the date of the plaintiff's demand for a refund. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

District court erred in holding that interest would not run until date that plaintiff's demanded refund. Canady v. Crestar Mtg. Corp., 109 F.3d 969 (4th Cir. 1997).

IV. PREJUDGMENT INTEREST.

Editor's Note. — *Some of the cases under this analysis line below were decided under this section as amended by Session Laws 1981, c. 327, s. 1, which provided for the accrual of interest on money judgments for compensatory damages in actions other than contract from the filing of the claim for claims covered by liability insurance, and from the time of the verdict for claims not so covered. Subsequently, the amendment by Session Laws 1985, c. 214, s. 1 rewrote this section, deleting any reference to liability insurance.*

As a general rule, North Carolina courts do not recognize the granting of prejudgment interest on unliquidated damages. Lazenby v. Godwin, 60 N.C. App. 504, 299 S.E.2d 288 (1983).

Legislative Intent. — Probable intent of the prejudgment interest statute, G.S. 24-5(b), is threefold: (1) to compensate plaintiffs for loss of the use of their money, (2) to prevent unjust enrichment of the defendant by having money he should not have, and (3) to promote settlement. Phillips v. Warren, 152 N.C. App. 619, 568 S.E.2d 230, 2002 N.C. App. LEXIS 959 (2002).

Section Is Designed to Provide Incentive to Resolve Claims Quickly. — This section, under which the prejudgment interest was awarded, was designed to provide an incentive for an insurance carrier to resolve claims quickly rather than delay resolution in order to maximize return of investment on lost reserves. Hartford Accident & Indem. Co. v. United States Fire Ins. Co., 710 F. Supp. 164 (E.D.N.C. 1989), aff'd, 918 F.2d 955 (4th Cir. 1990).

Applicability of Subsection (b). — In determining the question of prejudgment interest, where there is no question of liability and no judgment entered as to this issue, subsection (b) of this section does not apply. Barnes v. Hardy, 98 N.C. App. 381, 390 S.E.2d 758 (1990), aff'd, 329 N.C. 690, 407 S.E.2d 504 (1991).

No award of prejudgment interest, because subsection (b) is inapplicable, since a final judgment, including a judgment as to liability, had not been entered. Collins v. Beck, 116 N.C. App. 128, 446 S.E.2d 610, aff'd, 340 N.C. 255, 456 S.E.2d 307 (1995).

Recovery of Interest Under Subsection (b). — Subsection (b) of this section provides for the recovery of interest in instances where there has been both a judgment as to liability and a determination of appropriate compensatory damages. Barnes v. Hardy, 98 N.C. App. 381, 390 S.E.2d 758 (1990), aff'd, 329 N.C. 690, 407 S.E.2d 504 (1991).

The Supreme Court of North Carolina has held that prejudgment interest up to the amount of a carrier's liability limit is part of compensatory damages for which an underinsured motorist carrier is liable. Austin v. Midgett, 159 N.C. App. 416, 583 S.E.2d 405, 2003 N.C. App. LEXIS 1537 (2003).

Plain language of G.S. 24-5(b) provides that prejudgment interest continues to accrue until the judgment is satisfied. Whiteside Estates, Inc. v. Highlands Cove, L.L.C., 169 N.C. App. 209, 609 S.E.2d 804, 2005 N.C. App. LEXIS 542 (2005).

Court properly awarded a landowner prejudgment interest pursuant to G.S. 24-5 for the period between the entry of the first judgment in its favor, which determined that it was entitled to damages for the land disturbing activities caused by the developer, and the second judgment, which determined the amount of damages. Whiteside Estates, Inc. v. Highlands Cove, L.L.C., 169 N.C. App. 209, 609 S.E.2d 804, 2005 N.C. App. LEXIS 542 (2005).

In a wrongful death action based on the medical specialist's malpractice, the trial court did not err in requiring the specialist to pay all pre-judgment interest and costs; even if the claim of error had been preserved for appeal, there was no error because the trial court properly determined costs and interest before entitling the specialist to set-off for the settlement amount involving the other treating doctor, as G.S. 24-5(b) required that the pre-judgment interest be awarded before the set-off was given for the settlement amount. Boykin v. Kim, 174 N.C. App. 278, 620 S.E.2d 707, 2005 N.C. App. LEXIS 2396 (2005).

In breach of contract actions, prejudgment interest may be granted. Lazenby v. Godwin, 60 N.C. App. 504, 299 S.E.2d 288 (1983).

And prejudgment interest has also been granted under certain limited circumstances where the amount of a claim is obvious or easily ascertainable from the contract or insurance policy. Lazenby v. Godwin, 60 N.C. App. 504, 299 S.E.2d 288 (1983).

Treble Damages. — It is appropriate under G.S. 75-16 to treble only the verdict awarded by the jury and not prejudgment interest assessable pursuant to this section. Market Am., Inc. v. Rossi, 104 F. Supp. 2d 606 (M.D.N.C. 2000), aff'd, 238 F.3d 413 (4th Cir. 2000).

Pursuant to this section, the court should calculate prejudgment interest on the jury's verdict only, and not on the trebled damages awarded by the court. Market Am., Inc. v. Rossi, 104 F. Supp. 2d 606 (M.D.N.C. 2000), aff'd, 238 F.3d 413 (4th Cir. 2000).

Plaintiff whose damages were trebled pursuant to G.S. 75-16 of the North Carolina Unfair and Deceptive Trade Practices Act was awarded prejudgment interest on the amount of compensatory damages, $106.25 million, and postjudgment interest on the trebled amount, $318.75 million. Volumetrics Med. Imaging, Inc. v. ATL Ultrasound, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 11831 (M.D.N.C. July 10, 2003).

In a case arising from the termination of an employee, pre-judgment interest should not have been awarded based on treble damages arising from a violation of G.S. 75-1.1 due to a breach of contract; rather, the pre-judgment interest should have been awarded on the actual damages for breach of contract. Johnson v. Colonial Life & Accident Ins. Co., 173 N.C. App. 365, 618 S.E.2d 867, 2005 N.C. App. LEXIS 2015 (2005).

Prejudgment interest, provided for by this section held a "cost" within meaning of insurance contract. United States Fire Ins. Co. v. Nationwide Mut. Ins. Co., 735 F. Supp. 1320 (E.D.N.C. 1990), decided prior to 1985 amendment.

Prejudgment Interest Held Not a Cost Within Meaning of Policy. — Where insurance policy provided that, in addition to the policy limits, insurance company would pay all defense costs they incurred, prejudgment interest was not a defense cost within the meaning of the policy. Sproles v. Greene, 329 N.C. 603, 407 S.E.2d 497 (1991).

Liability of Insurer for Prejudgment Interest. — Since insurer's insurance contract with the insured provided it would pay "all costs taxed to the insured in a suit we defend" it was liable for prejudgment interest under its contract of insurance. However, prejudgment interest could not be awarded on the amount of the judgment in excess of the insurer's liability limits; thus, insured's liability was limited to interest on the amount of the judgment which represented its insurance coverage. United States Fire Ins. Co. v. Nationwide Mut. Ins. Co., 735 F. Supp. 1320 (E.D.N.C. 1990), decision prior to 1985 amendment.

A liability carrier's obligation to pay prejudgment interest in addition to its stated limits is governed solely by the language of the policy. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664 (1994), aff'd, 342 N.C. 482, 467 S.E.2d 34 (1996).

Insurance company was obligated to pay prejudgment interest as part of the total of any damages up to its liability limit; therefore, where the total judgments exceeded the policy's limit of liability, the individual claimants were not entitled to any prejudgment interest. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664 (1994), aff'd, 342 N.C. 482, 467 S.E.2d 34 (1996).

There is no statutory provision mandating that insurance carriers pay prejudgment interest that exceeds the stated limit of liability under the terms of the insurance contract, and since this section is not part of the Financial Responsibility Act, it is not written into every insurance policy. Watlington v. North Carolina Farm Bureau Mut. Ins. Co., 116 N.C. App. 110, 446 S.E.2d 614 (1994).

Whether the insurance policy expressly provided that prejudgment interest was calculable as a part of damages and was therefore included under the liability limits of the policy, defendant insurance company was not obligated to pay prejudgment interest above the policy limit of liability. Watlington v. North Carolina Farm Bureau Mut. Ins. Co., 116 N.C. App. 110, 446 S.E.2d 614 (1994).

The language of a liability carrier's policy controls the liability carrier's obligation to pay prejudgment interest in addition to its stated limits. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

Nothing prevents a liability insurer from defining "damages" to include prejudgment interest and then capping the amount of damages that can be paid. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

Prejudgment Interest from Date of Filing Complaint. — This section allows prejudgment interest to accrue from the time the action is instituted. As G.S. 1A-1, Rule 3 provides that a civil action is commenced by filing a complaint with the court, prejudgment interest is allowed to accrue from the date of filing with the court; thus, the court did not err in allowing prejudgment interest for the period prior to the time defendants were served with a valid complaint. Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

In a damage action arising out of an automobile collision, the defendants' admission in their answer of the existence of liability insurance was binding upon the parties and the trial judge. Therefore, the court's assessment of interest from the date the complaint was filed was not error. Dunn v. Herring, 75 N.C. App. 308, 330 S.E.2d 834, cert. denied, 314 N.C. 539, 335 S.E.2d 16 (1985).

Where insurance company orally offered to pay its policy limit, prejudgment interest, and the costs to plaintiffs, but it did not pay those sums into court until 13 days later, since this section specifically provides that a noncontractual judgment bears interest from the date the action is instituted until the judgment is satisfied, it is the date its policy limits were paid into court which controls with regard to the payment of post-judgment interest. Sproles v.

Integon Insurance Co., 329 N.C. 603, 407 S.E.2d 497 (1991).

The Court of Appeals has interpreted the plain language of this section to allow prejudgment interest to accrue from the time the action is instituted. Roberts v. Young, 120 N.C. App. 720, 464 S.E.2d 78 (1995).

Superior court's prejudgment interest award was erroneous and violated G.S. 24-5(b) because the court awarded interest beginning with the date that the suit was originally filed: (1) under § 24-5(b), plaintiff was entitled to prejudgment interest only for the period of time that his suit was pending prior to a judgment being entered in his favor; (2) plaintiff had voluntarily dismissed his original complaint a year after he filed it, and he had not refiled his suit until a year after that; and (3) the case was not pending, for purposes of awarding prejudgment interest under § 24-5(b) before plaintiff refiled it as permitted by N.C. R. Civ. P. 41. Brookshire v. N.C. DOT, DMV, 180 N.C. App. 670, 637 S.E.2d 902, 2006 N.C. App. LEXIS 2513 (2006).

Arbitration Proceedings. — An award of prejudgment interest was not precluded merely because the parties agreed to liability prior to entry into arbitration, but left open the issue of the amount of liability. Palmer v. Duke Power Co., 129 N.C. App. 488, 499 S.E.2d 801 (1998).

Where neither the arbitration agreement nor the arbitration award provided for prejudgment interest, the trial court was obligated to confirm the award as written and, accordingly, even if the arbitrator's failure to include prejudgment interest was a mistake of law or fact, such mistake could not be corrected by the trial court on a motion for modification or correction. Palmer v. Duke Power Co., 129 N.C. App. 488, 499 S.E.2d 801 (1998).

Trial court did not impermissibly modify arbitration award under G.S. 1-569.24 when it calculated prejudgment interest under G.S. 24-5(b) but merely enforced the award as written, since both the arbitration agreement as understood between the parties and the arbitration award as drafted by the arbitrator contemplated an award of prejudgment interest. Lovin v. Byrd, 178 N.C. App. 381, 631 S.E.2d 58, 2006 N.C. App. LEXIS 1395 (2006).

Trial court did not err in denying a passenger's request for prejudgment interest on his underinsured motorist arbitration award because, inter alia, implicit in the passenger's request for prejudgment interest existed a request to modify the arbitration award, and the circumstances of G.S. 1-569.24 were the only circumstances in which a trial court was permitted to modify an arbitration award; G.S. 1-569.25 and G.S. 24-5(b) did not expand the limited circumstances in which a trial court was required to modify an arbitration award. Blanton v. Isenhower, — N.C. App. —, 674 S.E.2d 694, 2009 N.C. App. LEXIS 360 (2009).

Trial court erred under G.S. 24-5(b) in refusing to award to an accident victim prejudgment interest on the amount of an arbitration award because the underinsured motorists provision of the automobile insurance policy provided for payment of compensatory damages and the arbitration award deferred the issue of prejudgment interest to the trial court. Hamby v. Williams, — N.C. App. —, 676 S.E.2d 478, 2009 N.C. App. LEXIS 519 (2009).

No Prejudgment Interest on Equitable Distribution. — No provision in the Equitable Distribution Act or any other statute authorizes the payment of prejudgment interest on an equitable distribution; this section, which authorizes prejudgment interest in certain instances, is limited to sums due by contract and to sums designated by the jury or other fact finder as compensatory damages in certain non-contract cases. Appelbe v. Appelbe, 76 N.C. App. 391, 333 S.E.2d 312 (1985).

Prejudgment Interest for Tort Involving Property Loss. — It is true that this section provides for the award of interest in certain situations. It does not, however, even peripherally address the jury's discretion under the common law to award prejudgment interest in a tort involving loss of property. Accordingly, it cannot be construed to displace the existing common law, when such abrogation has not been provided for in whole or in part. City Nat'l Bank v. American Commonwealth Fin. Corp., 608 F. Supp. 941 (W.D.N.C. 1985), aff'd, 801 F.2d 714 (4th Cir. 1986), cert. denied, 479 U.S. 1091, 107 S. Ct. 1301, 94 L. Ed. 2d 157 (1987).

The release of claims is not equivalent to the entry of a judgment as to liability for purposes of subsection (b) of this section. Barnes v. Hardy, 98 N.C. App. 381, 390 S.E.2d 758 (1990), aff'd, 329 N.C. 690, 407 S.E.2d 504 (1991).

Although case was not governed by the 1985 amendment providing for interest, plaintiff was entitled to prejudgment interest calculated from the date of breach since the amount of the damages to which the plaintiff was entitled could be determined by examining evidence relevant to the contract. Steelcase, Inc. v. Lilly Co., 93 N.C. App. 697, 379 S.E.2d 40, cert. denied, 325 N.C. 276, 384 S.E.2d 530 (1989).

Prejudgment Interest on Limits of Policy and Excess. — Where trial court granted prejudgment interest on only $5,000 that remained due on $30,000 judgment after subtracting $25,000 policy limits paid by the liability carrier after the filing date of the complaint but before the judgment, the trial court erred in failing to award prejudgment interest on the $25,000 paid by the liability carrier from the filing date until it was paid by the liability carrier. Regarding the remaining $5,000, prejudgment interest should have been taxed from the date of filing to the time of judgment as a cost, less any interest already paid. Beaver v. Hampton, 106 N.C. App. 172, 416 S.E.2d 8 (1992), rev'd in part and aff'd in part, 333 N.C. 455, 427 S.E.2d 317 (1993).

Failure to Return Overpayment as Breach of Implied Contract. — A breach of implied contract occurred each time during 1981 and 1982 that defendants overpaid plaintiff for oil and the latter failed to immediately return the overpayment, and the amount of the overpayments having been ascertained from the evidence, interest thereon immediately attached. But it attached only to the overcharges, the only money of defendants that plaintiff had the use of; it did not attach to the statutory penalty that was added to the overcharges pursuant to Chapter 75. Sampson-Bladen Oil Co. v. Walters, 86 N.C. App. 173, 356 S.E.2d 805, cert. denied, 321 N.C. 121, 361 S.E.2d 597 (1987).

Prejudgment Interest on Bid Deposit "Detained" Pending Litigation. — The executor was entitled under this section to prejudgment interest on, among other things, defendant's bid deposit as compensation for the court's "detention" of the deposit pending further litigation and resales arising from defendant's default. Parker v. Lippard, 87 N.C. App. 43, 359 S.E.2d 492 (1987), modified and aff'd on rehearing, 87 N.C. App. 487, 361 S.E.2d 395 (1987).

Interest on Purchase Price. — Although the contract for purchase and sale of property did not provide for the payment of any interest by defendant, because the parties contemplated defendant's performance and not defendant's breach of the contract, upon breach thereof the trial court properly ordered defendant to pay plaintiffs interest on the purchase price at the judgment rate to the date of closing. Deans v. Layton, 89 N.C. App. 358, 366 S.E.2d 560, cert. denied, 322 N.C. 834, 371 S.E.2d 276 (1988).

Default on Bid at Judicial Sale. — Clerk's order confirming the judicial sale constituted a legally binding acceptance of defendant's bid and therefore created a specific contract of purchase. The executor tendered deed to the auctioned property and demanded payment. Defendant's refusal to comply with that demand constituted a breach of defendant's contract to purchase the estate property. Since the executor's damages on that date were ascertainable based on defendant's confirmed bid, defendant could have tendered the correct amount and stopped both the running of interest and the executor's resale expenditures. Thus, as the executor's claim was ascertainable on that date, the accrual of interest on that claim commenced on that date. Parker v. Lippard, 87 N.C. App. 43, 359 S.E.2d 492 (1987), modified and aff'd on rehearing, 87 N.C. App. 487, 361 S.E.2d 395 (1987).

Executor Entitled to Prejudgment Interest on Judicial Sale. — An executor, after a series of resales arising from defendant's failure to comply with his bid at a judicial sale under G.S. 1-339.30, was entitled to prejudgment interest on defendant's full $125,000.00 bid. Parker v. Lippard, 87 N.C. App. 487, 361 S.E.2d 395 (1987).

Housing Authority Not Liable for Prejudgment Interest on Entire Verdict. — The court held that there was no reason to subject defendant to liability for prejudgment interest on the entire amount of the verdict, when defendant, the housing authority, was only insured for less than half that amount. To do so would run counter to the policy reasons surrounding the enactment of subsection (b). Petty v. Housing Auth., 90 N.C. App. 559, 369 S.E.2d 612 (1988).

Interest Held to Begin When Defendant Refused to Pay Final Bill. — In action by subcontractor to recover payment for work performed on a construction project, the award of interest from the date defendant refused to pay the final bill was properly granted. Moore v. Bobby Dixon Assocs., 91 N.C. App. 64, 370 S.E.2d 445, cert. denied, 323 N.C. 476, 373 S.E.2d 864 (1988).

In personal injury case, the trial court erred in awarding prejudgment interest to that portion of the award which was not covered by defendant's liability insurance. Wagner v. Barbee, 82 N.C. App. 640, 347 S.E.2d 844 (1986), cert. denied, 318 N.C. 702, 351 S.E.2d 761 (1987).

It is within the province of the trial court to set the date of breach for purposes of imposing prejudgment interest. Sockwell & Assocs. v. Sykes Enters., Inc., 127 N.C. App. 139, 487 S.E.2d 795 (1997).

Interest may be awarded on child support accruing on the date the complaint is filed. Taylor v. Taylor, 128 N.C. App. 180, 493 S.E.2d 819 (1997).

The trial court properly ordered that prejudgment interest attach to the amount recovered under an insurance policy, even though the damages were unliquidated and undetermined until the verdict was rendered. Nothing in this section supports the proposition that a party obligated by contract to pay money to another can use the other party's money at no cost merely because the exact amount due has not already been established. Dailey v. Integon Gen. Ins. Corp., 75 N.C. App. 387, 331 S.E.2d 148, cert. denied, 314 N.C. 664, 336 S.E.2d 399 (1985).

Prejudgment Interest on Net Amount of Offset Award. — In an arbitrated dispute between insurers where each party was awarded in its claim against the other, the district court did not err in offsetting the awards and in awarding prejudgment interest on only the net amount of the award, despite the claims by the insurer receiving the interest award that such an award of interest was a de facto award to which the other insurer was not entitled due to its dilatoriness in seeking to have the arbitration award confirmed and in opposing the confirmation; the de facto award merely placed the parties in the same position they would have occupied had they both immediately complied with the arbitration award. National Risk Underwriters, Inc. v. Occidental Fire & Cas. Co., 931 F.2d 1015 (4th Cir. 1991).

Action on Uninsured Motorist Coverage. — Although plaintiff's uninsured motorist coverage was provided by insurance contract, the right to recover thereon was grounded in tort. Therefore, plaintiff insured's action to recover under the policy met the first requirement for an award of prejudgment interest under this section, i.e., it was an action "other than contract." Further, the uninsured motorist coverage under which the insured sought damages was liability insurance. Thus, by the uninsured motorist coverage contained in the motor vehicle liability insurance policy, the insurer assumed, up to its policy limits, the liability of the uninsured motorist for damages which the insured was legally entitled to recover from the uninsured motorist. Therefore, the insured was entitled to an award of interest from the date the action was instituted. Ensley v. Nationwide Mut. Ins. Co., 80 N.C. App. 512, 342 S.E.2d 567, cert. denied, 318 N.C. 414, 349 S.E.2d 594 (1986).

Action Against Underinsured Motorist Carrier. — Underinsured motorist carrier was obligated to pay prejudgment interest, up to its policy limits, on the compensatory damages award of the jury in the underlying tort action by its insured against the tort-feasor. Baxley v. Nationwide Mut. Ins. Co., 334 N.C. 1, 430 S.E.2d 895 (1993).

It was not error for superior court to allow prejudgment interest against subcontractor and the surety on the subcontractor's bond in an action to recover by the contractor for work it was required to do after the subcontractor defaulted. Noland Co. v. Poovey, 58 N.C. App. 800, 295 S.E.2d 238 (1982).

Award of Interest Held Inappropriate Where Specific Performance Ordered. — Trial court erred in its order to award plaintiff's interest at the legal rate, on the earnest money deposit, from November 1, 1986 until delivery of a good and sufficient deed; an award of interest is inappropriate where the court has ordered specific performance and not monetary relief. Gordon v. Howard, 94 N.C. App. 149, 379 S.E.2d 674 (1989).

Shared Liability for Prejudgment Interest. — Primary carrier and umbrella carrier were both liable for the payment of the awarded prejudgment interest on a pro rata basis based on their respective shares of the settlement amount since primary carrier could have limited its liability for prejudgment interest by tendering the amount of its policy prior to trial and umbrella carrier should have taken an active role in defending the underlying action in light of plaintiff's request for damages in excess of the limits under primary carrier's liability policy. Hartford Accident & Indem. Co. v. United States Fire Ins. Co., 710 F. Supp. 164 (E.D.N.C. 1989), aff'd, 918 F.2d 955 (4th Cir. 1990).

Prejudgment interest is not authorized when only enforcing a statutory lien, absent a contract between the parties. W.H. Dail Plumbing, Inc. v. Roger Baker & Assocs., 78 N.C. App. 664, 338 S.E.2d 135, cert. denied, 316 N.C. 731, 345 S.E.2d 398 (1986).

Proof of Insurance Coverage. — The court did not err by allowing prejudgment interest where plaintiff presented no evidence that defendant carried liability insurance covering claim, since this section does not require plaintiff to present such evidence. Indeed, the law prohibits plaintiff from introducing such evidence at trial. In light of the statutory requirement of financial responsibility, G.S. 20-309 et seq., which is generally met through liability insurance, defendant has the burden of showing the absence of such insurance. Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

Prejudgment Interest Not a Cost. — Unless a policy of insurance provides to the contrary, prejudgment interest constitutes a portion of a plaintiff's damage award and not a cost. Ledford v. Nationwide Mut. Ins. Co., 118 N.C. App. 44, 453 S.E.2d 866 (1995).

Calculation of Prejudgment Interest. — The correct method of reducing a claim against a non-settling tortfeasor when prejudgment interest applies is to convert the settlement amount to judgment-time dollars, using the same legal rate of interest that is used in calculating prejudgment interest on the compensatory damages verdict, then subtracting the adjusted settlement figure from the adjusted compensatory damages figure. Brown v. Flowe, 349 N.C. 520, 507 S.E.2d 894 (1998).

Prejudgment interest provided for by this section held a "cost" within meaning of insurance contract, which insurer was obligated to pay. Lowe v. Tarble, 313 N.C. 460, 329 S.E.2d 648 (1985).

Where primary carrier filed a request for declaratory judgment to determine the party's rights and obligations to pay $620,689.66 in prejudgment interest awarded in a state court action involving an insured of the primary carrier and umbrella carrier, the award of prejudgment interest in this case was an element of damages and not a cost; the purpose of the award of prejudgment interest is to compensate a worthy plaintiff for the loss of the use of money that he or she has incurred due to the wrongful acts of another party. Hartford Accident & Indem. Co. v. United States Fire Ins. Co., 710 F. Supp. 164 (E.D.N.C. 1989), aff'd, 918 F.2d 955 (4th Cir. 1990).

Prejudgment Interest on Payments Withheld by Clerk of Court. — In a suit for the breach of a lease, the lessor was entitled under G.S. 24-5 to prejudgment interest on payments withheld by the clerk of court under G.S. 42-34; the payments did not include interest and were not a final settlement, and the lessor was deprived of the use of its money while it was retained by the clerk. N.C. Indus. Capital, LLC v. Clayton, 185 N.C. App. 356, 649 S.E.2d 14, 2007 N.C. App. LEXIS 1825 (2007).

Prejudgment Interest Properly Calculated After Discontinuance. — Prejudgment interest was properly calculated under G.S. 24-5 on an operator's judgment for damages arising out of a motor vehicle accident as: (1) due to a lapse in the alias or pluries summons, the operator's action was discontinued under G.S. 1A-1, N.C. R. Civ. P. 4; (2) the trial court lacked discretion in determining the commencement date of the action; (3) the action commenced on 9 June 2006, when the summons was reissued; and (4) the prejudgment interest was based on the period from 9 June 2006 to the date the judgment was entered. Bryson v. Cort, — N.C. App. —, 668 S.E.2d 84, 2008 N.C. App. LEXIS 1981 (2008).

Principal and Interest Not Distinguished. — The trial court did not err in awarding prejudgment interest when the jury did not distinguish between principal and interest, as the requirement that the jury distinguish between principal and interest pertains only to those rare situations where evidence as to both principal and interest is submitted to the jury for their consideration. Taha v. Thompson, 120 N.C. App. 697, 463 S.E.2d 553 (1995).

OPINIONS OF ATTORNEY GENERAL

Not Applicable When Appearance Bond Forfeited. — See opinion of Attorney General to Mr. Roy R. Holdford, Jr., 41 N.C.A.G. 809 (1972).

Interest May Not Be Assessed on Costs. — See opinion of Attorney General to Honorable Charles M. Johnson, Clerk of Superior Court Montgomery County, 51 N.C.A.G. 82 (1982).

§ 24-6. Clerk to ascertain interest upon default judgment on bond, covenant, bill, note or signed account.

When a suit is instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, and the defendant does not plead to issue thereon, upon judgment, the clerk of the court shall ascertain the interest due by law, without a writ of inquiry, and the amount shall be included in the final judgment of the court as damages, which judgment shall be rendered therein in the manner prescribed by § 24-5. (1797, c. 475, P.R.; R.C., c. 31, s. 91; Code, s. 531; Rev., s. 1956; C.S., s. 2310.)

CASE NOTES

This section dispenses with a jury and directs the clerk to compute the interest preparatory to a final judgment by default in suits "instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account," contemplating the rendition of such judgment upon written instruments which themselves specify the precise sum to be paid, and need only an estimate of accrued interest. Rogers v. Moore, 86 N.C. 85 (1882).

Courts' Power to Correct Mistake in Calculation. — A judgment by default upon a speciality, for the want of a plea, entered by the clerk in court, upon his calculation of interest, was held to be an office judgment, and it was also held that the court possessed the power to correct a mistake in the clerk's calculation of interest at any time upon motion. Griffin v. Hinson, 51 N.C. 154 (1858).

§ 24-7. Interest from verdict to judgment added as costs.

Except with respect to compensatory damages in actions other than contract as provided in G.S. 24-5, when the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto. (Code, s. 529; Rev., s. 1955; C.S., s. 2311; 1981, c. 327, s. 2.)

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

No discretion is vested in the court to determine what shall be the rate of interest in a given case. Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968).

No Interest on Awards Under State Tort Claims Act Absent Express Statutory Authority. — Because the State Tort Claims Act (G.S. 143-291 et seq.) is in derogation of sovereign immunity, and should, therefore, be strictly construed as written, there must be a specific statutory provision authorizing the accrual of interest on damage awards under the act. And although G.S. 24-5 and this section refer to post-judgment interest, the General Assembly nevertheless recently enacted G.S. 97-86.2 allowing interest on workers' compensation claims to be assessed on awards at the legal rate. Thus, the same type of statutory enactment would be necessary before any interest could accrue to a tort claims award. Myers v. Department of Crime Control & Pub. Safety, 67 N.C. App. 553, 313 S.E.2d 276 (1984).

Prejudgment interest provided for by § 24-5 held a "cost" within meaning of insurance contract, which insurer was obligated to pay. Lowe v. Tarble, 313 N.C. 460, 329 S.E.2d 648 (1985).

Applied in Glace v. Town of Pilot Mt., 265 N.C. 181, 143 S.E.2d 78 (1965); Shortt v. Knob City Inv. Co., 58 N.C. App. 123, 292 S.E.2d 737 (1982).

§ 24-8. Loans not in excess of $300,000; what interest, fees and charges permitted.

(a) If the principal amount of a loan is less than three hundred thousand dollars ($300,000), no lender shall charge or receive from any borrower or require in connection with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Repealed by Session Laws 2003-401, s. 2, effective October 1, 2003, and applicable to contracts entered into or renewed on or after that date.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law, any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials, and (iii) fees payable to the federal government, any state or local government or any federal, state, or local governmental agency in connection with a loan made pursuant to a loan program sponsored by or offered through the federal government, any state or local government or any federal, state or local government agency, including loan guarantee and tax credit programs. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include fees for tax payment services, fees for flood certification, fees for pest-infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange. (1961, c. 1142; 1969, c. 127; c. 1303, s. 5; 1993, c. 226, s. 12; 1999-332, s. 4; 2000-140, s. 40(c); 2003-401, s. 2.)

Legal Periodicals. — For comment on usury law in North Carolina, see 47 N.C.L. Rev. 761 (1969).

For comment on equity participation (a device to circumvent usury laws) in real estate finance, see 7 N.C. Cent. L.J. 387 (1976).

CASE NOTES

It is the making date which controls the ultimate determination whether the loan was usurious under this section. Rosenthal's Bootery, Inc. v. Shavitz, 48 N.C. App. 170, 268 S.E.2d 250 (1980).

Section Applicable to Loan Secured by North Carolina Realty. — Where a loan is secured by real estate located in North Carolina, the loan is subject to the laws of North Carolina relating to interest and usury. Appalachian S., Inc. v. Construction Mtg. Corp., 11 N.C. App. 651, 182 S.E.2d 15, cert. denied, 279 N.C. 396, 183 S.E.2d 244 (1971).

What Constitutes Loan. — Definitions require that there be a delivery of money on the one hand and an understanding to repay on the other for a loan to have been made. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

What Constitutes Bona Fide Fee. — The court's inquiry concerning whether a fee charged by a lender is bona fide for purposes of G.S. 24-8(d) focuses on whether services were actually provided or whether the fee included charges for unstated services. Capparelli v. Amerifirst Home Improvement Fin. Co., 535 F. Supp. 2d 554, 2008 U.S. Dist. LEXIS 11315 (E.D.N.C. 2008).

In a case in which homeowners alleged that a lender charged improper fees for a title search, an appraisal, and document preparation because the closing agent that performed the services was not legally authorized, the fees were held to be bona fide within the meaning of G.S. 24-8(d) since the services were actually performed and the lender was not required to ensure whether the closing agent needed or had a license. Capparelli v. Amerifirst Home Improvement Fin. Co., 535 F. Supp. 2d 554, 2008 U.S. Dist. LEXIS 11315 (E.D.N.C. 2008).

North Carolina courts do not hesitate to look beneath the forms of transactions alleged to be usurious in order to determine whether or not such transactions are in truth and reality usurious. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

Where a transaction is in reality a loan of money, whatever may be its form, and the lender charges for the use of his money a sum in excess of interest at the legal rate, by whatever name the charge may be called, the transaction will be held to be usurious. The law considers the substance and not the mere form or outward appearance of the transaction in order to determine what it in reality is. If this were not so, the usury laws of the State would easily be evaded by lenders of money who would exact from borrowers with impunity compensation for money loaned in excess of interest at the legal rate. Kessing v. National Mtg. Corp., 278

N.C. 523, 180 S.E.2d 823 (1971).

What Plaintiff Must Show in Action for Usury. — In an action for usury plaintiff must show (1) that there was a loan, (2) that there was an understanding that the money lent would be returned, (3) that for the loan a greater rate of interest than allowed by law was paid, and (4) that there was corrupt intent to take more than the legal rate for the use of the money. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971); Appalachian S., Inc. v. Construction Mtg. Corp., 11 N.C. App. 651, 182 S.E.2d 15, cert. denied, 279 N.C. 396, 183 S.E.2d 244 (1971); Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, 319 N.C. 102, 353 S.E.2d 103 (1987).

The court may declare a transaction usurious as a matter of law where there is no dispute as to the facts. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971); Appalachian S., Inc. v. Construction Mtg. Corp., 11 N.C. App. 651, 182 S.E.2d 15, cert. denied, 279 N.C. 396, 183 S.E.2d 244 (1971).

The corrupt intent required to constitute usury is simply the intentional charging of more for money lent than the law allows. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971); Appalachian S., Inc. v. Construction Mtg. Corp., 11 N.C. App. 651, 182 S.E.2d 15, cert. denied, 279 N.C. 396, 183 S.E.2d 244 (1971); Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, Gillispie v. Great Atl. & Pac. Tea Co., 14 N.C. App. 1, 187 S.E.2d 441 (1972).

Where the lender intentionally charges the borrower a greater rate of interest than the law allows and his purpose is clearly revealed on the face of the instrument, a corrupt intent to violate the usury law on the part of the lender is shown. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971); Appalachian S., Inc. v. Construction Mtg. Corp., 11 N.C. App. 651, 182 S.E.2d 15, cert. denied, 279 N.C. 396, 183 S.E.2d 244 (1971).

The limitation imposed by this section concerns a thing of value other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest. Thus, where defendant's endorsement and guaranty agreements served as security for loan, and no additional sum or thing of value was involved other than securing for plaintiff that the loan would be repaid in full, this section was not violated. Northwestern Bank v. Barber, 79 N.C. App. 425, 339 S.E.2d 452, cert. denied, 316 N.C. 733, 345 S.E.2d 391 (1986).

A 25% interest in a partnership (which owned the realty conveyed to it by plaintiff) was a "thing of value." Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

And this made the partnership agreement unlawful. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

Hence, the loan was usurious under this section. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

Transaction Violating Statute Unenforceable. — Where the defendant's counterclaims relate to the limited partnership and the trial court correctly adjudged that the loan transaction considered as a whole violated this section, it followed, therefore, that the limited partnership agreement and the conveyances made to the partnership contrary to this section were void and the courts will not lend their aid to the enforcement of a contract which is unlawful and violates its positive legislation. Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

Transaction Held Usurious. — Plaintiff's requiring, in connection with lending defendant $50,000.00 to buy a motel, that defendant also pay him one-sixth of the motel's profits and one-sixth of any gain on the sale of the motel was clearly prohibited by this section. Bagri v. Desai, 83 N.C. App. 150, 349 S.E.2d 309 (1986), cert. denied, 319 N.C. 102, 353 S.E.2d 103 (1987).

Applied in Colonial Acceptance Corp. v. Northeastern Printcrafters, Inc., 75 N.C. App. 177, 330 S.E.2d 76 (1985).

Cited in Lexington State Bank v. Suburban Printing Co., 7 N.C. App. 359, 172 S.E.2d 274 (1970); Hansen v. Jonas W. Kessing Co., 15 N.C. App. 554, 190 S.E.2d 407 (1972); West Raleigh Group v. Massachusetts Mut. Life Ins. Co., 809 F. Supp. 384 (E.D.N.C. 1992); Bumpers v. Cmty. Bank of N. Va., — N.C. App. —, 675 S.E.2d 697, 2009 N.C. App. LEXIS 516 (2009).

§ 24-9. Loans exempt from rate and fee limitations.

(a) As used in this section, the following definitions apply:

(1) "Bank" means a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States. However, the term "bank" does not include any subsidiary or affiliate of a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States that is not itself a bank, savings and loan association, savings

bank, or credit union chartered under the laws of North Carolina or the United States.

(2) "Equity line of credit" means a loan, other than an exempt loan, that satisfies all of the following conditions:

a. The lender is a bank.

b. The loan is a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan, and the loan is secured by a mortgage or deed of trust on real property.

c. At any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide credit advances up to the agreed aggregate credit limit. As used in this sub-subdivision, "lender is obligated" means that the lender is contractually bound to provide credit advances. However, the equity line of credit and the lender's obligation to make credit advances shall be subject to the provisions of section 226.5b(f) of Title 12 of the Code of Federal Regulations and the official commentaries and rulings issued pursuant thereto, as the same may be amended from time to time, without regard to whether that section of the Code of Federal Regulations would otherwise apply to the loan.

d. Any repayments of principal by the borrower within the specified time will reduce the amount of advances counted against the aggregate credit limit.

e. The initial loan amount is ten thousand dollars ($10,000) or more. On January 1, 2008, and on January 1 every five years thereafter, the minimum initial loan amount sufficient to qualify a loan closed on or after that date as an equity line of credit under this section shall be increased by one thousand dollars ($1,000). For example, a loan closed on or after January 1, 2008, but prior to January 1, 2013, shall not be considered an equity line of credit unless the initial loan amount is eleven thousand dollars ($11,000) or more, and a loan closed on or after January 1, 2013, but prior to January 1, 2018, shall not be considered an equity line of credit unless the initial loan amount is twelve thousand dollars ($12,000) or more.

An equity line of credit shall cease being an equity line of credit subject to the provisions of this section from and after the date the loan amount is reduced below the equity line of credit's initial loan amount unless (i) the loan amount was reduced for one or more of the reasons or pursuant to one or more of the methods specified in section 226.5b(f)(2) or section 226.5b(f)(3)(vi) of Title 12 of the Code of Federal Regulations and the official commentaries and rulings issued pursuant thereto, as the same may be amended from time to time, without regard to whether that section of the Code of Federal Regulations would otherwise apply to the loan, or (ii) the loan amount was reduced at the request of the borrower because the borrower was engaged in the refinancing of a loan secured by a superior lien on the same real property and the reduction in the loan amount of the equity line of credit is no greater than the difference between the loan amount secured by the refinancing mortgage and the outstanding principle balance of the loan being refinanced.

(3) "Exempt loan" means a loan in which:

a. The loan amount is three hundred thousand dollars ($300,000) or more; or

b. The borrower is a person other than a natural person; or

c. The loan is obtained by a natural person primarily for a purpose other than a personal, family, or household purpose. Whether a loan is obtained primarily for a purpose other than a personal, family, or household purpose shall be guided by the standards established by the federal Truth In Lending Act (Title 1 of Public Law 90-321; 82 Stat. 146; 15 U.S.C. § 160, et seq.) and all regulations and rulings issued pursuant to that Act, as the same may be amended from time to time.

(4) "Loan" means an advance of money or an extension of credit that is made to or on behalf of a borrower, the principal amount of which the borrower has an obligation to pay the lender. The term includes revolving lines of credit, open-end loans, revolving credit plans, and revolving credit card plans in addition to closed-end loans.

(5) "Loan amount" means the principal amount of a loan or, in the case of a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan, the initial maximum credit limit.

(b) Notwithstanding any other provision of this Chapter or any other provision of State law, any borrower in an exempt loan transaction may agree to pay, and any lender, including a bank, may charge and collect from the borrower, interest at any rate and fees and other charges in any amount that the borrower agrees to pay. A claim or defense of usury is prohibited in an exempt loan transaction.

(c) The provisions of G.S. 24-1.2A, 24-11, and 24- 11.1 shall not apply to equity lines of credit offered by banks. Except as provided in this subsection and notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate and fees and other charges in any amount that the borrower agrees to pay in connection with an equity line of credit. However, an equity line of credit made by a bank shall be subject to the following, to the extent otherwise applicable:

(1) The provisions of G.S. 24-1.1E (relating to restrictions and limitations on high-cost home loans).

(2) The provisions of G.S. 24-10.2 (relating to consumer protections in certain home loans).

(3) Notwithstanding the limitation against prepayment penalties contained in G.S. 45-81(c), a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:

a. Prepayment fees or penalties may be charged only with respect to the prepayment of that portion of the outstanding balance the borrower voluntarily agrees to repay at a fixed interest rate over a specified time;

b. No prepayment fees or penalties may be charged for prepayments made more than 30 months after the borrower voluntarily exercises the right or option to repay that portion of the outstanding balance of the equity line of credit at a fixed interest rate over a specified period of time; and

c. The prepayment fees or penalties charged with respect to that portion of the outstanding balance to be repaid at a fixed rate over a specified period of time may not exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

Otherwise, no prepayment fees or penalties may be charged or collected by the bank with respect to an equity line of credit.

(d) The provisions of G.S. 24-11 and G.S. 24-11.1 shall not apply to revolving credit card plans offered by banks. Notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate, as well as fees and other charges in any amount that the borrower agrees to pay in connection with a revolving credit card plan. This subsection (d) shall not apply to a revolving credit card plan that is secured by a mortgage or deed of trust on real property. (1963, c. 753, s. 1; 1965, c. 335; 1969, c. 896; 1979, c. 138, s. 5; 1995, c. 351, s. 13; 2003-401, s. 1.)

Editor's Note. — This section, as rewritten by Session Laws 2003-401, s. 1, effective October 1, 2003, is applicable to contracts entered into or renewed on or after that date.

Legal Periodicals. — For comment on usury law in North Carolina, see 47 N.C.L. Rev. 761 (1969).

CASE NOTES

North Carolina's usury statute, G.S. 24-10.1, did not apply to business loans between corporations, and there was no basis for a bankruptcy trustee's contention to treat the loan transaction at issue as an individual transaction where the loan was clearly made to a limited liability company. Whitaker v. Mortg. Miracles, Inc. (In re Summit Place, LLC), 298 Bankr. 62, 2002 Bankr. LEXIS 1774 (Bankr. W.D.N.C. 2002).

A surety for a corporate debt answered "in behalf" of the corporation, within the plain meaning of this section, and was, under the plain meaning of this section, precluded from raising the defense of usury. Colonial Acceptance Corp. v. Northeastern Printcrafters, Inc., 75 N.C. App. 177, 330 S.E.2d 76 (1985).

Applied in Vreede v. Koch, 94 N.C. App. 524, 380 S.E.2d 615 (1989).

§ 24-9.1. Certain repayments to consumers by public utilities not subject to claim or defense of usury.

Notwithstanding any other provision of this Chapter or any other provision of law, any public utility, as defined by G.S. 62-3, shall pay to its customers such rate of interest as may be required by order of the North Carolina Utilities Commission in transactions wherein the utility is refunding to its customers funds advanced by or overcollected from the customers. As to such transactions, the claim or defense of usury by such public utility and its successors or anyone else in its behalf is prohibited. (1981, c. 461, s. 3.)

§ 24-9.2: Repealed by Session Laws 1995, c. 351, s. 14.

§ 24-9.3. Economic development loans.

Fees or other funds paid by borrowers for contribution to loss reserve accounts administered and controlled by nonprofit corporations that are part of State-funded programs that provide loans to promote economic development shall not be considered interest under this Chapter and shall not be subject to claims or defenses of usury. (1995, c. 252, s. 1.)

§ 24-10. Maximum fees on loans secured by real property.

(a) No lender on loans made under G.S. 24-1.1 shall charge or receive from any borrower or any agent for a borrower, any fees or discounts unless otherwise allowed where the principal amount is less than three hundred thousand dollars ($300,000) and is secured by real property, which fees or discounts in the aggregate shall exceed two percent (2%) if a construction loan on other than a one or two family dwelling, and one percent (1%) on any other type of loan; provided, however, if a single lender makes both the construction loan and a permanent loan utilizing one note, the lender may collect the fees as if they were two separate loans. Except as provided herein or otherwise allowed, no party shall pay for the benefit of the lender any other fees or discounts.

(b) Any loan made under G.S. 24-1.1 in an original principal amount of one hundred thousand dollars ($100,000.00) or less may be prepaid in part or in full, after 30 days notice to the lender, with a maximum prepayment fee of two percent (2%) of the outstanding balance at any time within three years after the first payment of principal and thereafter there shall be no prepayment fee, provided that there shall be no prepayment fee charged or received in connection with any repayment of a construction loan; and except as herein provided, any lender and any borrower may agree on any terms as to prepayment of a loan.

(c) "Construction loan" means a loan which is obtained for the purpose of financing fully, or in part, the cost of constructing buildings or other improvements upon real property and the proceeds of which, under the terms of a written contract between a lender and a borrower, are to be disbursed periodically as such construction work progresses; and such loan shall be payable in full not later than 18 months in case of a loan made under the provisions of G.S. 24-1.1(1) or 36 months in case of any other construction loan made after the execution of the note by the borrower. A construction loan may include advances for the purchase price of the property upon which such improvements are to be constructed.

(d)(1) Any lender may charge to any person, firm or corporation that assumes a loan, secured by real property, the following fee:

a. Where the mortgage or deed of trust contains a due on sale clause, a fee not to exceed four hundred dollars ($400.00); provided, however, that if the original obligor is not released from liability on the obligation, the fee shall not exceed one hundred twenty-five dollars ($125.00).

b. Where the mortgage or deed of trust does not contain a due on sale clause, a fee not to exceed one hundred twenty-five dollars ($125.00).

The fees authorized by this subsection may be paid in whole or in part by any party but the total shall not exceed the maximum fees set forth herein.

(2) For purposes of this subsection, the term "due on sale clause" means a contract provision that authorizes a lender to declare immediately due and payable all sums secured by the lender's security instrument if all or any part of the secured property, or an interest therein, is sold or transferred without the lender's prior written consent or contrary to the requirements of the mortgage or the deed of trust. For purposes of this subsection, no lender shall exercise its rights under the due on sale clause if prohibited by federal law as of the date of execution of the contract containing the clause.

(e), (f) Repealed by Session Laws 1985, c. 755, s. 2.

(g) Notwithstanding the limitations contained in subsection (a) of this section, a lender described in G.S. 24-1.1A(a)(2) may charge or receive from any borrower or any agent for a borrower, fees or discounts which in the aggregate do not exceed two percent (2%) on loans made under G.S. 24-1.1 or G.S. 24-1.2(2) when such loans are secured by a second or junior lien on real property. The fees or discounts are fully earned when the loan is made and are not a prepayment penalty under this Chapter or any other law of this State.

(h) A bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof organized under the laws of this State or the United States, may charge a party to a loan secured by real property a reasonable fee as may be agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. Upon the request of the borrower, the lender shall provide at no additional charge to the borrower a copy of any appraisal for which the lender has collected a fee under this subsection. Provision of the copy of an appraisal shall not be construed to create or imply any warranty which does not otherwise exist by the lender as to the accuracy of the appraisal. (1967, c. 852, s. 1; 1969, c. 40; c. 1303, s. 6; 1971, c. 1168; 1979, c. 684; c. 849, s. 1; c. 969; 1981, c. 933; 1983, c. 541, s. 1; 1985, c. 154, s. 2; c. 755, s. 2; 1991, c. 506, s. 5.)

Editor's Note. — The reference in subsection (c) to G.S. 24-1.1(1) should now refer to G.S. 24-1.1(a)(1). See Session Laws 1991, c. 506, s. 2.

Section 24-1.2, referred to in subsection (g) above, has been repealed.

Legal Periodicals. — For comment on usury law in North Carolina, see 47 N.C.L. Rev. 761 (1969).

For article, "Transferring North Carolina Real Estate Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

For note on the operation of a due-on-sale clause in a deed of trust to allow a lender to exact higher interest rates from the grantee of a mortgagor, see 13 Wake Forest L. Rev. 490 (1977).

CASE NOTES

Purpose. — The wisdom of the statute, and others like it, is manifest. First the statute preserves freedom of contract, a principle long recognized and jealously guarded in North Carolina. Secondly, the statute recognizes the borrowers and lenders are best able in a free market place to determine for themselves what prepayment terms are acceptable, "reasonable," "proportionate," and "fair." The statute recognizes that prepayment provisions are part an parcel of the overall loan terms and, as such, are better left to the agreement of the parties. West Raleigh Group v. Massachusetts Mut. Life Ins. Co., 809 F. Supp. 384 (E.D.N.C. 1992).

Section Does Not Cover Interest Rates. — Scope of this section plainly does not extend to, nor does it even address, the issue of interest rates. In re Foreclosure of Deed of Trust Executed By Bonder, 306 N.C. 451, 293 S.E.2d 798 (1982).

Higher Interest upon Transfer of Property Not Covered by Section. — This section has no bearing upon the ability of a due-on-sale clause to generate higher interest when the original borrower later transfers the property securing the loan. In re Foreclosure of Deed of Trust Executed By Bonder, 306 N.C. 451, 293 S.E.2d 798 (1982).

Amount of Lawful Prepayment Premiums Limited. — Loan pre-payment provisions are valid and enforceable; amount of lawful prepayment premiums are limited. In re Carr Mill Mall Ltd. Partnership, 201 Bankr. 415 (Bankr. M.D.N.C. 1996).

Section Held Applicable. — Note executed in connection with a $2.8 million real estate loan was clearly in excess of $100,000 and was not alleged to be a "construction loan"; there could be no serious argument that the partner did not agree upon the contested prepayment provisions, since those provisions were expressly a part of the Note. Accordingly, subsection (b) of this section was applicable to the note and that the enforceability of the prepayment terms of the note was governed by it. West Raleigh Group v. Massachusetts Mut. Life Ins. Co., 809 F. Supp. 384 (E.D.N.C. 1992).

Prepayment Prior to Enactment of § 24-2.4. — Considering the acts of the General Assembly, specifically this section and G.S. 24-1.1A, the law of North Carolina prior to the enactment of G.S. 24-2.4 was that the mortgagor had the right of prepayment when the note was silent. Hatcher v. Rose, 329 N.C. 626, 407 S.E.2d 172 (1991).

Statute of Limitations. — Homeowner's claim brought for allegedly illegal interest rates and fees on her second mortgage was dismissed as the statute of limitations had expired because the homeowner should have discovered any violation on the day of the closing. Faircloth v. Nat'l Home Loan Corp., 313 F. Supp. 2d 544, 2003 U.S. Dist. LEXIS 4206 (M.D.N.C. 2003).

Statute of limitations for usury claim was two years; where all details of borrowers' loan, including the interest rate, fees, and expenses, were disclosed before the closing in loan documents to the borrowers, who had the capacity and the opportunity to discover their claim but failed to do so, the statute of limitations for the borrowers' usury claim began to run on the date of the closing of their loan. Shepard v. Ocwen Fed. Bank, FSB, 172 N.C. App. 475, 617 S.E.2d 61, 2005 N.C. App. LEXIS 1810 (2005).

Plaintiffs' claims against a trust company and its trustee under G.S. 24-10 failed where the statute of limitations for the action began to accrue when plaintiffs closed on their property and as that was more than four years prior to the filing of the action, the statute of limitations in G.S. 1-52(2)-(3) had expired. Skinner v. Preferred Credit, 172 N.C. App. 407, 616 S.E.2d 676, 2005 N.C. App. LEXIS 1806 (2005).

Cited in Crockett v. First Fed. Sav. & Loan Ass'n, 289 N.C. 620, 224 S.E.2d 580 (1976); Dash v. FirstPlus Home Loan Trust 1996-2, 248 F. Supp. 2d 489, 2003 U.S. Dist. LEXIS 3706 (M.D.N.C. 2003).

§ 24-10.1. Late fees.

(a) Subject to the limitations contained in subsection (b) of this section, any lender may charge a party to a loan or extension of credit governed by the provisions of G.S. 24-1.1, 24-1.2, or 24-1.1A a late payment charge as agreed upon by the parties in the loan contract.

(b) No lender may charge a late payment charge:

(1) In excess of four percent (4%) of the amount of the payment past due; or

(2) In excess of the amount disclosed with particularity to the borrower pursuant to the provisions of the Federal Consumer Credit Protection Act if the transaction is one to which the provisions of that act apply, which in no event shall exceed four percent (4%); or

(3) For any payment unless past due for 15 days or more; provided, however, if the loan is one on which interest on each installment is paid in advance, no late payment charge may be charged until the payment is 30 days past due or more; or

(4) More than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the contract and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. If a late payment charge has been once imposed with respect to a particular late payment, no such charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default; provided that when a borrower fails to make an installment payment, and the terms of the loan agreement provide that subsequent payments shall first be applied to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured; or

(5) On any loan which by its terms calls for repayment of the entire balance in a single payment and not for installments of interest or principal and interest; or

(6) Unless the lender notifies the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment which late payment must be paid unless the borrower can show that the installment was paid in full and on time. No late payment charge may be collected from any borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late charge.

(c) The provisions of this subsection apply only to home loans made by lenders described in G.S. 24-1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late payment charge in excess of that permitted in this section, the loan shall not be deemed to be unlawful if:

(1) No late fee in excess of those permitted in this section has been assessed or collected by the lender; and

(2)a. If the loan is executed on or after July 14, 1993, the lender provides written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan shall be four percent (4%) or less; or

b. If the loan was executed prior to July 14, 1993, the lender provides written notice to the borrower within six months of that date that the late payment charge with respect to the loan shall be four percent (4%) or less. (1985, c. 755, s. 1; 1987, c. 447; 1993, c. 339, s. 1.)

Editor's Note. — Section 24-1.2, referred to in subsection (a) above, has been repealed.

Legal Periodicals. — For survey on usury law, see 70 N.C.L. Rev. 1983 (1992).

CASE NOTES

Penalty fees for late payments are "interest" and are compensation for the detention of money owed another, and all such compensation must be forfeited when its rate is usurious, as defined by the laws of this state. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

Change for Lender's Forbearance in Collecting Charge Is Interest. — Just as a charge for a creditor's forbearance in the collection of a debt is interest, so a charge for a lender's forbearance in collecting a payment due is interest. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

Penalty Provisions of § 24-2 Applicable. — The General Assembly, which specified a maximum legal rate for late payment fees in this section, considered such fees "interest" and intended to induce observance of that law through the penalty provisions of G.S. 24-2. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

North Carolina's usury statute, G.S. 24-10.1, did not apply to business loans between corporations, and there was no basis for a bankruptcy trustee's contention to treat the loan transaction at issue as an individual transaction where the loan was clearly made to a limited liability company. Whitaker v. Mortg. Miracles, Inc. (In re Summit Place, LLC), 298 Bankr. 62, 2002 Bankr. LEXIS 1774 (Bankr. W.D.N.C. 2002).

Violator Not Required to Forfeit Interest Due on Loan Itself. — The statutory penalty for usury requires a defendant which has charged late payments in excess of the legal maximum rate permitted by former G.S. 24-10(e) (see now this section) to forfeit all late payment charges to which it might otherwise have been entitled under the terms of the loan, but defendant is not required to forfeit the interest due on the loan itself. Swindell v. Federal Nat'l Mtg. Assoc., 330 N.C. 153, 409 S.E.2d 892 (1991).

Cited in Beau Rivage Plantation, Inc. v. Melex USA, Inc., 112 N.C. App. 446, 436 S.E.2d 152 (1993).

§ 24-10.2. Consumer protections in certain home loans.

(a) For purposes of this section, the term "consumer home loan" means a loan, including an open-end credit plan but excluding a reverse mortgage transaction, in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. "Flipping" a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).

(d) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
(2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law.

(h) A mortgage broker who brokers a consumer home loan that violates the provisions of this section shall be jointly and severally liable with the lender. (1999-332, s. 5; 2003-401, s. 4; 2007-352, s. 5.)

Editor's Note. — Session Laws 1999-332, s. 8 made this section effective October 1, 1999, and applicable to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date, except that subsection (b) of this section becomes effective July 1, 2000, and applies to loans made or entered into on or after that date.

Subsection (a), as amended by Session Laws 2003-401, s. 4, effective October 1, 2003, is applicable to contracts entered into or renewed on or after that date.

Effect of Amendments. — Session Laws 2007-352, s. 5, effective January 1, 2008, added subsection (h).

CASE NOTES

Cited in Tillman v. Commer. Credit Loans, Inc., 362 N.C. 93, 655 S.E.2d 362, 2008 N.C. LEXIS 21 (2008).

§ 24-11. Certain revolving credit charges.

(a) On the extension of credit under an open-end credit or similar plan (including revolving credit card plans, and revolving charge accounts, but excluding any loan made directly by a lender under a check loan, check credit or other such plan) under which no service charge shall be imposed upon the consumer or debtor if the account is paid in full within 25 days from the billing date, but upon which there may be imposed an annual charge not to exceed twenty-four dollars ($24.00), there may be charged and collected interest, finance charges or other fees at a rate in the aggregate not to exceed one and one-half percent (11/2%) per month computed on the unpaid portion of the balance of the previous month less payments or credit within the billing cycle or the average daily balance outstanding during the current billing period.

(a1) If the lender chooses not to impose an annual charge under this section, the lender may impose a service charge not to exceed two dollars ($2.00) per month on the balance of any account which is not paid in full within 25 days from the billing date.

(a2) No person, firm or corporation may charge a discount or fee in excess of six percent (6%) of the principal amount of the accounts acquired from or through any vendors or others providing services who participate in such plan.

(b) On revolving credit loans (including check loans, check credit or other revolving credit plans whereby a bank, banking institution or other lending agency makes direct loans to a borrower), if agreed to in writing by the borrower, such lender may collect interest and service charges by application of a monthly periodic rate computed on the average daily balance outstanding during the billing period, such rate not to exceed one and one-half percent (11/2%).

(c) Any extension of credit under an open-end or similar plan under which there is charged a monthly periodic rate greater than one and one-quarter percent (11/4%) may not be secured by real or personal property or any other thing of value, provided, that this subsection shall not apply to consumer credit sales regulated by Chapter 25A, the Retail Installment Sales Act; provided further, that in any action initiated for the possession of property in which a security interest has been taken, a judgment for the possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-105(6)) for which the cash price was one hundred dollars ($100.00) or more.

(d) The term "billing date" shall mean any date selected by the creditor and the bill for the balance of the account must be mailed to the customer at least 14 days prior to the date specified in the statement as being the date by which payment of the new balance must be made in order to avoid the imposition of any finance charge.

(d1) A lender may charge a party to a loan or extension of credit governed by this section a late payment charge not to exceed five dollars ($5.00) on accounts having an outstanding balance of less than one hundred dollars ($100.00) and ten dollars ($10.00) on accounts having an outstanding balance of one hundred dollars ($100.00) or more, for any payment past due for 30 days or more; provided, in no case shall the late charge exceed the outstanding principal balance. If a late payment charge has been once imposed with respect to a late payment, no late charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default.

(e) An annual or service charge pursuant to this section upon an existing credit card account upon which the charge has not previously been imposed may not be imposed unless the lender has given the cardholder at least 30 days notice of the proposed charge, and has advised the cardholder of his right not to accept the new charge. This notice shall be bold and conspicuous, and shall be on the face of the periodic billing statement or on a separate statement which is clearly noted on the face of the periodic billing statement provided to the cardholder. If the cardholder does not accept the new charge upon an existing credit card account, the lender may require that the cardholder make no further use of the account beyond the 30-day period in order to avoid paying the annual charge, but the cardholder shall be entitled to pay off any remaining balance according to the terms of the credit agreement. Nothing in this subsection shall limit the lender from decreasing any rates or fees to the cardholder forthwith. Should any cardholder within 12 months of the initial imposition of an annual charge rescind his credit card contract and surrender all cards issued under the contract to the lender, he shall be entitled to a prorated refund of the annual fee previously charged, credited to the cardholder's credit card account. (1967, c. 852, s. 1.1; 1969, c. 1303, s. 7; 1977, c. 148, s. 1; cc. 917, 1108; 1979, 2nd Sess., c. 1330, s. 3; 1981, c. 844, s. 1; 1983, c. 126, ss. 5, 10; 1991, c. 506, s. 6; c. 761, s. 45; 1995, c. 387, s. 2; 2009-570, s. 27.)

Effect of Amendments. — Session Laws 2009-570, s. 27, effective August 28, 2009, substituted "judgment" for "judgement" in subsection (c).

Legal Periodicals. — For comment on usury law in North Carolina, see 47 N.C.L. Rev. 761 (1969).

For survey of 1976 case law on insurance, see 55 N.C.L. Rev. 1052 (1977).

For article calling for a comprehensive federal consumer credit code, see 58 N.C.L. Rev. 1 (1979).

CASE NOTES

Section Applicable to Transactions Between Merchants. — The application of this section is not limited to "consumer credit sales"; it extends to transactions between merchants as well as transactions involving a consumer. State Whsle. Supply, Inc. v. Allen, 30 N.C. App. 272, 227 S.E.2d 120 (1976).

Open Insurance Account. — Sections 24-11 and 58-56.1 (now 58-35-10) authorize an insurance agent who extends customer credit on an open account to impose a finance charge on his own customers in an amount not to exceed an aggregate annual rate of 18 percent. Hyde Ins. Agency, Inc. v. Noland, 30 N.C. App. 503, 227 S.E.2d 169 (1976).

Imposition of Finance Charges on Open Insurance Account Without Prior Express Agreement. — It was the intention of the legislature to authorize the imposition of finance charges on an open insurance account, even though there had not been any prior express agreement between the parties regarding such charges, but such charges could not be imposed unless the debtor was given proper notice that the creditor intended to impose such finance charges. Hyde Ins. Agency, Inc. v. Noland, 30 N.C. App. 503, 227 S.E.2d 169 (1976).

Excess Interest Rate Rendered Security Interest Invalid. — Creditor took a security interest in a debtor's motorcycle in violation of G.S. 24-11(c) because the 19.742% per annum interest rate charged by the creditor on the revolving line of credit exceeded 1.25% per month and the debtor was allowed to recover attorney's fees. Worley v. GE Moneybank (In re Worley), — Bankr. —, 2008 Bankr. LEXIS 1893 (Bankr. E.D.N.C. June 16, 2008).

How Amount Due May Be Handled After Relationships Ended. — This section means that the extension of credit at the outset of a relationship as outlined in the statute may not be secured by real or personal property, etc., and does not mean that once the relationship is terminated, the amount due and owing to the creditor may not be handled in a fashion agreeable to both the creditor and the debtor. Anderson v. Pamlico Chem. Co., 470 F. Supp. 12 (E.D.N.C. 1977).

A transaction whereby seller would forebear collection of the amount due from buyer on an open-end credit plan and reduce its interest rate on the balance outstanding and the buyer would execute a promissory note to the seller and give the seller a deed of trust on a farm to secure the note was not an extension of credit within the meaning of this section, but rather constituted a novation of the old agreement. Anderson v. Pamlico Chem. Co., 470 F. Supp. 12 (E.D.N.C. 1977).

Notification Held Sufficient. — Plaintiff oil company was entitled to interest on the amount due at the rate of 1.5% per month, pursuant to this section, where each of the sales tickets and invoices that it delivered to defendants partners for payment contained a notice of the balance due and the service charges incurred. Harrell Oil Co. of Mount Airy v. Case, 142 N.C. App. 485, 543 S.E.2d 522, 2001 N.C. App. LEXIS 135 (2001).

Applied in City Nat'l Bank v. Edmisten, 681 F.2d 942 (4th Cir. 1982); Inco, Inc. v. Planters Oil Mill, Inc., 63 N.C. App. 374, 304 S.E.2d 782 (1983).

Cited in Sears, Roebuck & Co. v. Vandeusen, 155 Bankr. 358 (E.D.N.C. 1993).

§ 24-11.1. Disclosure requirements for credit cards.

(a) This section applies to any application, solicitation of an application, offer of credit, or communication extending credit that is:

(1) For an open-end credit plan accessed through a credit card or a revolving credit loan accessed through a credit card;
(2) Printed;
(3) Mailed or otherwise delivered to a person at any address within this State;
(4) Not delivered pursuant to an existing credit agreement; and
(5) Not printed in a newspaper, magazine, or periodical generally circulated outside as well as inside the State.

(b) Disclosures. — The following disclosures shall be clearly and conspicuously made in or with all documents described in subsection (a) of this section:
(1) The annual percentage rate or, if the rate may vary, a statement that it may vary, the circumstances under which the rate may increase, any limitations on the increase, and the effects of the increase on the other terms of the agreement.
(2) The date or occasion upon which the finance charge begins to accrue on a transaction and the duration of any grace period.
(3) Whether an annual fee is charged and the amount of the fee.
(4) Any delinquency charge, late charge, or collection charge which may be assessed for the late payment of any installment, including the terms and conditions for the imposition of such charge.

(c) Federal Requirements. — The form and content of the disclosures described in subsection (b) may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.R.F. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for creditors subject to the Act.

(d) Penalty. — A violation of this section shall constitute a violation of G.S. 75-1.1 except that the creditor shall not be liable for any fine, civil penalty, treble damages, or attorney's fee where the creditor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(e) Severability. — If any part of this section is found unconstitutional or is preempted by federal law with regard to a creditor because the creditor is located outside of the State, that part does not apply to creditors located within the State.

(f) Nothing in this section shall be construed to authorize any fee, charge, surcharge or penalty not otherwise authorized by law. (1987, c. 735, s. 1.)

Editor's Note. — The reference in subsection (c) above to 12 C.R.F. 226 is probably intended to be 12 C.F.R. 226.

§ 24-11.2. Disclosure requirements for charge cards.

(a) Applications and Other Communications. — This section applies to any application, solicitation of an application, offer of credit, or communication extending credit that is:
(1) For credit accessed through a charge card;
(2) Printed;
(3) Mailed or otherwise delivered to a person at any address within this State;
(4) Not delivered pursuant to an existing credit agreement; and
(5) Not printed in a newspaper, magazine, or periodical generally circulated outside as well as inside the State.

For purposes of this section, the term "charge card" means any card, plate or other device pursuant to which the charge card issuer extends credit which is not subject to a finance charge and where the charge cardholder cannot automatically access credit that is repayable in installments.

(b) Disclosures. — The following disclosures shall be clearly and conspicuously made in or with all documents described in subsection (a) of this section:

(1) The annual fee and other charges, if any, applicable to the issuance or use of the charge card.

(2) That charges incurred by the use of the charge card are due and payable upon receipt of a periodic statement of charges.

(3) Any delinquency charge, late charge, or collection charge which may be assessed for late payment, including the terms and conditions for the imposition of such charge.

(c) Federal Requirements. — The form and content of the disclosures described in subsection (b) may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall, to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for creditors subject to the Act.

(d) Penalty. — A violation of this section shall constitute a violation of G.S. 75-1.1 except that the creditor shall not be liable for any fine, civil penalty, treble damages, or attorney's fee where the creditor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(e) Severability. — If any part of this section is found unconstitutional or is preempted by federal law with regard to a creditor because the creditor is located outside the State, that part does not apply to creditors located within the State.

(f) Nothing in this section shall be construed to authorize any fee, charge, surcharge or penalty not otherwise authorized by law. (1987, c. 735, s. 1.)

ARTICLE 2.

Loans Secured by Secondary or Junior Mortgages.

§ 24-12. Applicability of Article.

This Article shall apply only to loans of money:

(1) Secured in whole or in part by a security instrument on real property, other than a first security instrument on real property; and

(2) The principal amount of the loan does not exceed twenty-five thousand dollars ($25,000);

(3) The loan is repayable in no less than six nor more than 181 successive monthly payments, which payments shall be substantially equal in amount. (1971, c. 1229, s. 2; 1979, 2nd Sess., c. 1157, ss. 2, 3.)

CASE NOTES

Cited in Dash v. FirstPlus Home Loan Trust 1996-2, 248 F. Supp. 2d 489, 2003 U.S. Dist. LEXIS 3706 (M.D.N.C. 2003).

§ 24-13. Principal amount defined.

The aggregate of the amount or value actually received at the time of the loan, plus the charges allowed by G.S. 24-14(b) (c) and (f); plus the sum of all existing indebtedness of the borrower paid on his behalf by the lender, shall be deemed the principal amount of the loan. (1971, c. 1229, s. 2; 1979, 2nd Sess., c. 1157, s. 4; 1985, c. 154, s. 3.)

CASE NOTES

Cited in Clemmer v. Liberty Fin. Planning, Inc., 467 F. Supp. 272 (W.D.N.C. 1979).

§ 24-14. Limitations on charges and interest.

(a) No person, copartnership, association, trust, corporation or other legal entity making loans under this Article may charge, take or receive, directly or indirectly, simple interest in excess of one and one-half percent (11/2%) per month or an annual rate equivalent to the Federal Discount Rate plus five percent (5%), whichever is the greater, computed on the actual or average daily unpaid balance of the principal amount of the loan for the time actually outstanding. However, interest may not be compounded.

(b) In addition to the interest permitted in subsection (a), the lender may include in the loan his actual expenses which are paid to third parties in connection with the loan. Such expenses shall be limited to those for: title examination, title insurance, appraisals, surveys, and recording fees or releasing fees to trustees or public officials, and only such insurance charges as permitted in subsection (c).

(c) Evidence of hazard insurance may be required by the lender of the borrower. Credit life, credit accident and health, and credit unemployment insurance, or any of them, may be offered but not required; provided (i) that the borrower has indicated a desire to purchase such insurance by signing a statement to that effect, (ii) that the borrower is advised that he may acquire this insurance from any insurance carrier, (iii) that the borrower is aware that this insurance may be rescinded within 30 days after receipt of the policy or certificate, and (iv) that the borrower directs the lender to purchase the above insurance from the proceeds of his loan.

The rates for the herein described insurance shall not exceed the standard rates approved by the Commissioner of Insurance for such insurance. Proof of all insurance issued in connection with loans subject to this Article shall be furnished to the borrower within 10 days from the date of application therefor by said borrower.

(d) No application fee or other charge shall be allowed in the event the loan is not consummated.

(e) The borrower shall further have the right to anticipate payment of his debt in whole or in part at any time, without payment of interest penalty, or any other fee or charge for such prepayment.

(f) In addition to the interest permitted by subsection (a), the lender may include in the principal balance fees or discounts not exceeding two percent (2%) of the principal amount of the loan less the amount of any existing loan by that lender to be refinanced, modified or extended. The fees and discounts are fully earned when the loan is made and are not a prepayment penalty. (1971, c. 1229, s. 2; 1973, c. 1150; 1977, c. 698, ss. 1, 2; 1979, 2nd Sess., c. 1157, ss. 5, 6; 1985, c. 154, s. 4; 1993, c. 226, s. 13.)

CASE NOTES

Statute of Limitations. — Homeowner's claim brought for allegedly illegal interest rates and fees on her second mortgage was dismissed as the statute of limitations had expired because the homeowner should have discovered any violation on the day of the closing. Faircloth v. Nat'l Home Loan Corp., 313 F. Supp. 2d 544, 2003 U.S. Dist. LEXIS 4206 (M.D.N.C. 2003).

Because borrowers failed to file suit on their claim based on a usurious loan origination fee within two years of the date the loan in question was closed, their claim was time barred; the loan origination fee was not added to loan amount, but was deducted from the proceeds received by the borrowers at closing, so the loan closing date was the relevant date for statute of limitations purposes. Shepard v. Ocwen Fed. Bank, FSB, 361 N.C. 137, 638 S.E.2d 197, 2006 N.C. LEXIS 1327 (2006).

Cited in Dash v. FirstPlus Home Loan Trust 1996-2, 248 F. Supp. 2d 489, 2003 U.S. Dist. LEXIS 3706 (M.D.N.C. 2003); Ferguson v. Coffey, 180 N.C. App. 322, 637 S.E.2d 241, 2006 N.C. App. LEXIS 2325 (2006).

§ 24-15: Repealed by Session Laws 1979, 2nd Session, c. 1157, s. 7.

§ 24-16. Itemized closing statements.

Any person, copartnership, association, trust, corporation, or any other legal entity making on its own behalf, or as agent, broker or in other representative capacity on behalf of any other person, copartnership, association, trust, corporation or any other legal entity, a loan or real property financing transaction within the regulatory authority of this Article, at the time of the closing shall furnish the debtor or borrower or grantor in the mortgage, deed of trust or any other security instrument, in addition to the disclosures required by federal law known as "Truth in Lending," a complete and itemized closing statement which shall show all disbursements of the loan proceeds and which shall total the principal amount of the loan or security transaction, and the said closing statement shall be signed by the lending agency or a representative of the lending agency, or a responsible officer in its behalf and a completed and signed additional copy retained in the files of the lending agency involved and available at all reasonable times to the borrower, the borrower's successor in interest to the security real property, or the authorized agent of the borrower or the borrower's successor, until such time as the security instrument shall be satisfied in full. Such closing statement shall contain the following language printed in a conspicuous manner:

"This loan is one regulated by the provisions of Chapter 24, Article 2 of the General Statutes of North Carolina entitled 'Loans Secured by Secondary or Junior Mortgages'." (1971, c. 1229, s. 2.)

CASE NOTES

Cited in Clemmer v. Liberty Fin. Planning, Inc., 467 F. Supp. 272 (W.D.N.C. 1979).

§ 24-16.1. Loans exempt from §§ 24-12 to 24-17.

G.S. 24-12 to 24-17 shall not apply to loans made by banks, insurance companies, or their duly designated agents compensated directly by the lender, duly licensed credit unions, production credit associations authorized by the Farm Credit Act of 1933, or savings and loan associations authorized to do business in this State, or to loans made by any other lender licensed by, and under the supervision of, the Commissioner of Banks and the State Banking Commission, under the provisions of Chapter 53 of the General Statutes, or the Commissioner of Insurance, under the provisions of Chapter 58 of the General

Statutes. Provided, any lender approved as a mortgagee by the Federal Housing Administration shall be entitled to make loans under this Article.

G.S. 24-12 to 24-17 shall not apply to a loan made under Article 1 of this Chapter. (1971, c. 1229, s. 2; 1983, c. 126, § 9; 1985, c. 154, s. 5.)

§ 24-17. Misdemeanors.

A wilful or knowing violation of G.S. 24-12 through G.S. 24-16 is hereby made a Class 1 misdemeanor. (1971, c. 1229, s. 2; 1993, c. 539, s. 400; 1994, Ex. Sess., c. 24, s. 14(c).)

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